

VOLUME I
TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1957

No. 24

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AIRCRAFT AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW-CIO), AN UNINCORPORATED LABOR ORGANIZATION, AND
MICHAEL VOLK, AN INDIVIDUAL,
PETITIONERS.

PAUL S. RUSSELL

IN WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF ALABAMA

PETITION FOR CERTIORARI FILED SEPTEMBER 15, 1956
CERTIORARI GRANTED NOVEMBER 19, 1956

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1957

No. 21

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AIRCRAFT AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW-CIO), AN UNIN-
CORPORATED LABOR ORGANIZATION, AND
MICHAEL VOLK, AN INDIVIDUAL,
PETITIONERS,

vs.

PAUL S. RUSSELL

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF ALABAMA

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**IN THE CIRCUIT COURT OF MORGAN COUNTY,
STATE OF ALABAMA****SUMMONS—July 14, 1952**State of Alabama)
Morgan County)**To Any Sheriff of the State of Alabama:**

You are hereby commanded to summon International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C. I. O., an unincorporated organization; Local 68 of International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C. I. O., an unincorporated organization; Congress of Industrial Organizations, an unincorporated organization; United Textile Workers of America, A. F. L., an unincorporated organization; Local 88 of United Textile Workers of America, A. F. L., an unincorporated organization; American Federation of Labor, an unincorporated organization; Michael Volk; Tommy Wilson; Howard Hovis; Felton Dyer; and Ralph Webster; to appear within thirty days from the service of this writ in the Circuit Court, to be held for said County at the place of holding the same, then and there to answer the complaint of Paul S. Russell.

Witness my hand this 14th day of July, 1952.

H. H. Hill, Clerk.[fol. 9] **IN CIRCUIT COURT OF MORGAN COUNTY****PLEA TO THE JURISDICTION**

Come now the defendants, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C.I.O., an unincorporated organization; United Textile Workers of America, A.F.L., an unincorporated organization; Local 88, United Textile Workers of America, A.F.L., an unincorporated organization; Michael Volk;

Tommy Wilson; Howard Hovis; Felton Dyer and Ralph Webster, named defendants in the above-styled action, and they each individually and collectively file this their plea to the jurisdiction in said cause and to each and every count thereof separately and severally, and for grounds thereof show the following, separately and severally:

I

The Calumet and Hecla Consolidated Copper Company (Wolverine Tube Division) named as employer in said cause, at the times referred to in said complaint was an industry which affected interstate commerce within the meaning of the National Labor Relations Act, as amended by the Labor Management Relations Act of 1947 (29 U.S.C.A. Sec. 141, et seq.).

II

International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C.I.O. (U.A.W.-C.I.O.), at all times referred to in said complaint was a labor organization within the meaning of said Act and was the collective bargaining agent for certain employees of said employer.

III

During the entire period of time referred to in said complaint said employees represented by U.A.W.-C.I.O. were engaged in a strike and maintained a picket line on Railroad Avenue at the entrance to said employer's premises for the purpose of their mutual aid and protection as was their right and privilege under the provisions of Section 7 of the aforementioned Act. The activity of said employees represented by U.A.W.-C.I.O. and of alleged supporters of said employees in maintaining said picket line, is made the sole and entire foundation of plaintiff's complaint for damages.

IV

This Court is without jurisdiction over the subject matter of said complaint.

V

The Congress of the United States in the exercise of its power over interstate commerce by the provisions of said Act has preempted and exclusively occupied the field of regulation of labor relations in industries affecting interstate commerce, to the contravention and prohibition of the exercise of any jurisdiction in said field by this Court.

[fol. 10]

VI

The Congress of the United States, in the exercise of its power over interstate commerce, by the provisions of said Act has provided for the complete administration and enforcement of the rights and duties created and defined by said Act and has created an exclusive forum, the National Labor Relations Board, for the administration and enforcement of said rights and duties; and the Congress has defined therein all other rights of action for the violation, protection and regulation of the rights and duties created, defined and regulated by said Act, not within the exclusive jurisdiction of said forum, setting forth therein and defining said rights of action, setting forth the parties who have the right to enforce said rights of action and setting forth the courts in which said rights of action may be adjudicated in the case of each such right of action so defined and set forth.

VII

The subject matter alleged in the instant case, if true, is regulated by Section 8(b)(1) of said Act, the jurisdiction for the regulation and enforcement of which is granted exclusively to the National Labor Relations Board, together with authority to take such remedial action and grant such relief as said Board shall deem appropriate for the violation of said Section, to the exclusion of the exercise of any jurisdiction whatsoever over the subject matter of said complaint by this Court.

VIII

This Court is without jurisdiction to grant the relief prayed for in said complaint.

IX

For this Court to entertain said complaint and to grant the relief therein prayed for, would be in violation of Article 1, Section 8, Paragraph 3 of the Constitution of the United States, for the reason that said Constitutional provision grants to the Congress of the United States exclusive jurisdiction to regulate commerce between the several states, and Congress having undertaken to regulate said commerce by the aforementioned Act, any action by this Court upon the subject matter therein regulated would be in derogation of the authority granted to, and exercised by, Congress under said Constitutional provision.

Wherefore, the above-named defendants show that this Honorable Court has no jurisdiction of the subject matter, and of the cause of action, made the basis of said complaint and that this Court ought not to take further jurisdiction of said cause and complaint; and they pray that said cause be forever abated and dismissed.

Respectfully submitted,

Adair & Goldthwaite, 203 Connally Bldg., Atlanta 3,
Ga.

[fol. 11] Sherman Powell, Decatur, Ala.

Duly sworn to by M. E. Duncan (Jurat omitted in printing).

[fol. 43] IN CIRCUIT COURT OF MORGAN COUNTY

AMENDMENT TO COMPLAINT—Filed December 15, 1952

Comes the plaintiff in the foregoing cause and amends his complaint by striking the following defendants, namely, Local 68 of International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C.I.O., an unincorporated organization; Congress of Industrial Organizations, an unincorporated organization;

United Textile Workers of America, A. F. L., an unincorporated organization; Local 88 of United Textile Workers of America, A. F. L., an unincorporated organization; American Federation of Labor, an unincorporated organization; and Tommy Wilson, and amends Counts One and Two of the complaint so that the same will read as follows, respectively:

Count One. The plaintiff claims of the defendants the sum of Fifty Thousand (\$50,000.00) Dollars as damages for that on and prior to July 18, 1951, the plaintiff was an employee of Calumet and Hecla Consolidated Copper Company (Wolverine Tube Division) engaged in his said employment at the plant of his said employer in Decatur, Alabama, and customarily went to and from said plant in pursuance of his employment on and over a public street in Decatur, Morgan County, Alabama, known as Railroad Avenue, which said street was the only means of ingress to and [fol. 44] egress from said plant. At the times hereinabove and hereinafter mentioned the defendant, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C. I. O., was the bargaining agent for certain of the employees of plaintiff's said employer, and called a strike against said employer on, to-wit, July 17, 1951, to commence on July 18, 1951. The defendants, in order to make said strike effective, and in order to prevent plaintiff and various other employees of plaintiff's employer, who desired to continue working for their said employer notwithstanding said strike, from entering their employer's place of business, established and maintained from, to-wit, July 18, 1951 to August 22, 1951, a picket line along and in said public street at a point thereon in close proximity to said plant, consisting of great numbers of persons; some of whom were standing along said street and some of whom were walking in a close and compact circle across the entire traveled portion of said street, and said pickets by force of numbers, threats of bodily harm to plaintiff and damage to his property, and by force and violence consisting of taking hold of the

automobile in which plaintiff was riding and thereby stopping it, and consisting of some of said pickets standing or walking in front of said automobile, blocked said public street and made passage to said plant over the same impossible for plaintiff and for others similarly situated, and defendants thereby wilfully and maliciously prevented plaintiff from going to and from said plant and from engaging in his said employment, and caused plaintiff to lose much time from his work, to-wit, from July 18, 1951 to August 22, 1951, and to lose earnings from his employment at said plant which he would have received had he not been prevented as aforesaid from going to and from said plant, and caused plaintiff to suffer much mental anguish, all to plaintiff's damage as aforesaid, and plaintiff, in addition to his claim for compensatory damages, claims of the defendants such punitive and exemplary damages as are commensurate with their malicious and reprehensible conduct as aforesaid and as may seem appropriate to the jury trying this cause to punish defendants for such wrongful conduct and to deter defendants and others from committing similar wrongs in the future?

Count Two. Plaintiff claims of the defendants Fifty Thousand (\$50,000.00) Dollars as damages for that heretofore on, to-wit, the 18th day of July, 1951, plaintiff was employed by Calumet and Hecla Consolidated Copper Company (Wolverine Tube Division) at its plant in Decatur, Alabama. The only means of ingress and egress to and from said plant at said time was an entrance from a public street in Decatur, Alabama, known as Railroad Avenue in said City. On, to-wit, the date aforesaid, the defendants unlawfully conspired, confederated, and agreed together, and with other persons who are not made parties to this suit, to prevent the plaintiff and other employees at said plant from entering the same and performing their duties as such employees, and in furtherance of said conspiracy the defendant, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C. I. O., an unincorporated organization, stationed [fol. 45] or caused the individual defendants in this case and sundry other persons to be stationed at, around and

near the entrance to said plant on Railroad Avenue, the individual defendants and said other persons being herein-after referred to as pickets, and some of said pickets were standing along said street and some of them were walking in a close and compact circle across the entire traveled portion of said street, and by force of numbers and threats of bodily harm to plaintiff and damage to his property, and by force and violence consisting of some of said pickets taking hold of the automobile in which plaintiff was riding and thereby stopping it, and by some of said pickets standing or walking in front of said automobile, the defendants blocked said Railroad Avenue and the entrance to said plant from Railroad Avenue, and thereby wrongfully and maliciously prevented the plaintiff from entering his place of employment at said plant for a long period of time, to-wit, one month, and as a proximate consequence plaintiff lost time from his work and lost earnings from his employment at said plant which he would have received had he not been prevented as aforesaid from entering said plant, and plaintiff claims punitive and exemplary damages to punish defendants for their wrongful conduct and to set an example to deter similar conduct in the future.

Horace C. Wilkinson, Julian Harris, Norman W. Harris

Filed in office Dec. 15, 1952, H. H. Hill, Clerk.

IN CIRCUIT COURT OF MORGAN COUNTY

DEMURRER TO PLEA—Filed December 15, 1952

Comes the plaintiff in the above styled cause and demurs to the plea designated as "Plea To The Jurisdiction" filed by the defendants, International Union, United Automobile, Aircraft and Agricultural Implement Workers, of America, C. I. O., an unincorporated organization, Michael Volk, Howard Hovis, Felton Dyer and Ralph Webster, separately and severally, and assigns the following grounds of demurrer, separately and severally, that is to say:

1. The plea does not set forth any facts which deprive the Court of jurisdiction to entertain and adjudicate the cause of action set forth in the complaint.

2. Neither at the time of the occurrence of the acts of the defendants made the basis of the complaint in this cause, nor at the time of the filing of this suit, did the National Labor Relations Board have any jurisdiction at the instance of the plaintiff or anyone in his behalf to award plaintiff relief on account of the wrongful acts of the defendants alleged in the complaint, or to redress the wrongful conduct committed by the defendants.

[fol. 46] 3. Neither the National Labor Relations Act nor the Labor Management Relations Act of 1947 deprived the State of Alabama of jurisdiction through its courts to redress wrongs sustained by any person as the result of a labor dispute, nor to award a citizen damages sustained by him by reason of the wrongful conduct of employees of an employer governed by said Acts.

4. The exercise by this Court of its jurisdiction to render judgment awarding damages to the plaintiff and against the defendants for the wrongful conduct averred in the complaint does not in any manner impair, dilute, qualify, or in any respect subtract from any of the rights guaranteed and protected by the National Labor Relations Act and the Labor Management Relations Act of 1947.

5. Neither the National Labor Relations Act nor the Labor Management Relations Act of 1947 conferred upon the defendants the right to commit the wrongs alleged in the complaint, nor deprive this Court of jurisdiction to redress said wrongs at the suit of the plaintiff.

6. Wrongful conduct such as mass picketing, threats, force and violence, as alleged in the complaint in this cause, constitute the basis for a common law tort action, and the National Labor Relations Act and the Labor Management Relations Act of 1947 do not deprive the State of Alabama of authority to exercise its police power through its courts to adjudge and award damages in favor of the plaintiff against the defendants for such wrongful conduct.

7. The wrongful conduct of the defendants alleged in the complaint, such as mass picketing, threats, force and violence, gave rise to two remedies, one before the National Labor Relations Board to prohibit the same, and one before the courts of the state in which said acts were committed to award damages at the suit of any person injured thereby, and the remedy before the National Labor Relations Board was in addition to the right on the part of the injured person to maintain suit in a state court of competent jurisdiction, and there is no inconsistency between said remedies.

8. The maintenance of this suit does not in any way interfere with and is not inconsistent with the exercise of jurisdiction by the National Labor Relations Board conferred upon it by the National Labor Relations Act as amended by the Labor Management Relations Act of 1947.

9. No jurisdiction has been conferred by law upon the National Labor Relations Board to award compensatory damages sustained by plaintiff on account of the matter and things alleged in the complaint.

10. It does not appear that the labor organization which is a defendant in this case, or any other defendants, is responsible for unlawful discrimination against an employee under such circumstances as would confer jurisdiction upon the National Labor Relations Board under the provisions of Section 10 (e) of the Labor Management Relations Act [fol. 47] of 1947 to order his reinstatement with back pay.

Horace C. Wilkinson, Norman W. Harris, Attorneys
for Plaintiff.

Filed in office Dec. 15, 1952, H. H. Hill, Clerk.

[fol. 51] IN CIRCUIT COURT OF MORGAN COUNTY

AMENDMENT TO COMPLAINT—Filed June 4, 1953

Comes plaintiff and amends his complaint as last amended as follows:

Plaintiff amends Count One of his complaint by striking the words and figures "August 22" where they first occur therein and by inserting in lieu thereof the word and figures "September 24".

Plaintiff further amends Count One by inserting the words "at various and sundry intervals during said period" immediately following the words "and some of whom were walking".

Plaintiff further amends Count One by inserting the words "on or about July 18, 1951" immediately following the words "and said pickets" and immediately before the words "by force of numbers".

Plaintiff amends Count Two by inserting the words "and plaintiff suffered much mental pain and anguish and was humiliated and embarrassed" immediately preceding the words "and plaintiff claims punitive and exemplary damages".

Horace C. Wilkinson, Julian Harris, Norman W. Harris, Attorneys for Plaintiff

Filed in office June 4, 1953.

[fol. 53] IN CIRCUIT COURT OF MORGAN COUNTY

JUDGMENT—May 25, 1953

May 25, 1953: Upon the orders of the Court that the pleadings be settled and the issues be formed, comes the parties by their attorneys into open court, and, in keeping with the ruling and judgment of the Supreme Court of Alabama on appeal in this cause, it is considered, ordered and *ordered* that the nonsuit taken by plaintiff on December 29, 1952, be and the same is hereby set aside, rescinded and annulled, and that this cause be and the same is hereby

restored to the trial docket of this Court for further proceedings.

Thereupon, defendants, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C. I. O., an unincorporated organization, Michael Volk, Howard Hovis, Felton Dyer, and Ralph Webster re-file their plea to the jurisdiction of the Court, originally filed August 15, 1952, and re-filed December 15, 1952, and plaintiff re-files his demurrer to said plea, and upon consideration of the same, it is ordered and adjudged that the plaintiff's demurrer to said plea to the jurisdiction be and the same is hereby sustained.

Thereupon, said defendants refile their demurrer to the complaint as amended, the said demurrer having been originally filed August 15, 1952, and upon consideration of the same, it is ordered and adjudged that said demurrer to the complaint be and the same is hereby overruled. Thereupon, the defendants plead the general issue in short by consent, with leave to give in evidence any matter that would be a defense if well-pleaded, with leave to plaintiff to reply in like manner.

June 4, 1953: This cause having come on for trial on June 3, 1953, and a jury, consisting of G. H. Grisham and eleven others, having been duly empaneled, and the parties having proceeded with the introduction of evidence, plaintiff asks leave to amend his complaint by amending Counts One and Two and by adding Count Three, and the defendants having objected to the filing of Count Three, and the Court having considered said objection, it is ordered and adjudged by the Court that the same be and is hereby overruled. To which action of the Court the defendants reserve an exception.

Thereupon, the defendants move to strike Count Three of the complaint, and said motion being considered by the Court, it is ordered and adjudged by the Court that the same be and is hereby overruled. To said action of the Court in overruling said motion the defendants reserve an exception. By agreement of the parties hereto Count Three of the complaint is withdrawn, and the defendants to the complaint as last amended re-file their said plea to the

jurisdiction of the Court, and the plaintiff re-files his demurrer thereto, and said demurrer being duly considered by the Court, it is ordered and adjudged by the Court that the same be and is hereby sustained. Thereupon, the defendants re-file their demurrer to the complaint as amended, and the Court having considered said demurrer, it is [fol. 54] ordered and adjudged by the Court that the same be and is hereby overruled. Thereupon, the defendants plead the general issue in short by consent, with leave to give in evidence any matter that would be a defense if well-pleaded, with a like leave on the part of plaintiff to reply in like manner.

June 10, 1953: Upon the conclusion of the evidence the plaintiff amends his complaint by striking therefrom as defendants Howard Hovis, Felton Dyer, and Ralph Webster, and the defendants, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C. I. O., an unincorporated organization, and Michael Volk re-file their plea to the jurisdiction of the Court. Whereupon plaintiff re-files his demurrer to said plea, and said demurrer being duly considered by the Court, it is ordered and adjudged by the Court that the same be and is hereby sustained. Thereupon, the said defendants re-file their demurrer to the complaint as amended, and the same being duly considered by the Court, it is ordered and adjudged that said demurrer be and the same is hereby overruled. Thereupon, the defendants plead the general issue in short by consent, with leave to give in evidence any matter that would be a defense if well-pleaded, with a like leave on the part of plaintiff to reply in answer thereto.

June 11, 1953: The jury empaneled to try the issues in this cause having been duly sworn according to law, and having heard the evidence introduced and the charge of the Court do upon their oaths say and do return into open court in words and figures as follows:

"We the Jury find for the Plaintiff and assess the damage at \$10,000.00.

G. H. Grisham, Foreman"

It is therefore in accordance with the verdict of the jury considered, ordered and adjudged by the Court that the

plaintiff have and recover of the defendants, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C. I. O., an unincorporated organization, and Michael Volk, the said sum of Ten Thousand (\$10,000.00) Dollars, together with the costs of this cause, for the recovery of which let execution issue.

[fol. 55] **IN CIRCUIT COURT OF MORGAN COUNTY**

EXCERPTS FROM MOTION FOR NEW TRIAL—Filed July 9, 1953

Come now the defendants and respectfully move the Court to set aside the verdict of the jury and to vacate and set aside the judgment heretofore rendered in favor of the plaintiff and against the defendants, and to grant to the defendants herein a new trial, and for grounds of said Motion defendants set down and assign the following, and show that the same were erroneous, illegal and contrary to law, and were harmful and prejudicial to them:

- • • • •
2. For that the verdict of the jury is not sustained by any evidence in the case, and is without evidence to support it.
 3. For that the verdict of the jury is so contrary to the evidence as to indicate bias, prejudice or malice on the part of the jury toward the defendants.
 4. For that the verdict of the jury is contrary to the great weight of the evidence.
 5. For that the verdict of the jury is not sustained by the preponderance of the evidence in the cause.
 6. For that the verdict of the jury is so contrary to the evidence as to indicate that the jury misunderstood the proprieties of the case.
 7. For that the verdict of the jury is contrary to law.
 8. For that the verdict is excessive as to indicate bias, prejudice and malice on the part of the jury toward the defendants.

12. For that the verdict of the jury is so grossly excessive as to indicate that the jury misunderstood the proprieties of the case.

[fol. 59]

33. For that the Court erred in giving to the jury at the request of the plaintiff in writing, and before the jury retired, the following charge:

"9. The Court charges the jury that picketing is lawful when it is for the purpose of observation, or for the purpose of peaceful persuasion, or for the purpose of apprising others of a dispute between employer and employees, but that picketing is unlawful if carried on with intimidation, threats, coercion, force or violence. Picketing is unlawful if such a large number of pickets is utilized as to obstruct a public street and block the entrance to a plant from said street, or if the pickets use threats or abusive language towards others to such an extent as to instill fear of harm or injury in the mind of a reasonable man. The Court further charges the jury that if the defendants in this case stationed or caused pickets to be stationed on a public street, as alleged in the complaint, for the purpose of preventing plaintiff and others from entering into their place of employment by means of intimidation, threats, coercion, force or violence, and if you are reasonably satisfied from the evidence that the number of pickets and their conduct as alleged in the complaint was such as to prevent the plaintiff by such unlawful means from entering his place of employment, and as a proximate consequence thereof the plaintiff was denied access to his place of employment for a long period of time, you should return a verdict in favor of plaintiff."

[fol. 60]

46. For that the Court erred in refusing to give to the jury at the request of the defendants in writing, and before the jury retired, the following written charge:

"40. I charge you that employees have the right to join trade, or labor, unions, and to organize themselves, in order to better their terms and conditions of employment, the right to select for themselves a representative, such as a labor union, to deal for them with their [fol. 61] employer, the right to strike for legitimate and lawful objects, and the right to picket peaceably in furtherance of their strike and to persuade peaceably others to join them in their endeavor. Where a strike of employees is directed against their employer in an effort to obtain legitimate and lawful objects, they are not liable to their employer for economic loss sustained as a result of the strike or as a result of peaceful picketing in furtherance of said strike. Neither are the employees liable to their fellow employees for wages lost because of a strike, unless it is shown that the strike is unlawful, unless it is shown that the strike was unlawfully directed against the fellow employees, or unless it is shown that the loss of wages was proximately caused by unlawful conduct in furtherance of the strike. It is not contended by the plaintiff in this case that the strike was unlawful or that the strike was unlawfully directed against the plaintiff."

[fol. 77]

Wherefore, defendants respectfully pray that the verdict of the jury in this cause and the judgment rendered thereon be set aside and held for naught, and that the pretrial rulings of the Court be vacated and set aside and that the defendants be granted a new trial of said cause.

Respectfully submitted,

Adair and Goldthwaite, Thomas S. Adair, J. R. Goldthwaite, Jr., 203 Connally Building, Atlanta 3, Georgia, Cy. 2525.

Sherman B. Powell, Second Avenue, & Grant Street, Decatur, Alabama:

Attorneys for Defendants

Filed in office Jul 9, 1953, H. H. Hill, Clerk.

[fol. 79] IN CIRCUIT COURT OF MORGAN COUNTY

JUDGMENT ON MOTION—August 7, 1953

This cause coming on to be further heard on the motion filed by the defendants for a new trial and a rehearing, and at the time and place designated for the hearing of same, the grounds of the motion were argued by the attorneys for each and both of the parties, plaintiff and defendants, by both oral arguments and written briefs, and said motion being submitted to and considered by the Court, the same was taken under advisement by the Court:

And now upon full and mature consideration, the Court is at the conclusion that said motion is not well taken,

It is therefore hereby ordered and adjudged by the Court that the said motion for a new trial and a rehearing filed by the defendants be and the same is overruled.

The defendants in open court duly reserve an exception to this ruling and judgment of the Court.

This August 7, 1953.

S. A. Lynne, Judge of the 8th Judicial Circuit of Alabama, sitting for the County of Morgan.

Filed in office August 7, 1953, H. H. Hill, Clerk.

[fol. 80] IN THE CIRCUIT COURT, MORGAN COUNTY, ALABAMA

PAUL S. RUSSELL, Plaintiff,

v.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT & AGRICULTURAL IMPLEMENT WORKERS, MICHAEL VOLK, HOWARD HOVIS, FELTON DYER and RALPH WEBSTER, Defendants.

Transcript of Evidence

This case came on to be heard in the Circuit Court of Morgan County, Alabama, at Decatur, Alabama, on the 3rd, 4th, 5th, 8th, 9th, 10th and 11th days of June, 1953,

before the Honorable S. A. Lynne, Judge presiding, and a jury.

The following proceedings, not otherwise of record, were had, to-wit:

APPEARANCES

For the Plaintiff: Norman W. Harris, Decatur, Alabama, Horace Wilkinson, Birmingham, Alabama.

For the Defendants: Adair & Goldthwaite, Atlanta, Ga., Sherman B. Powell, Decatur, Alabama.

PAUL S. RUSSELL, first witness for the plaintiff, being first duly sworn, testified:

Direct examination.

By Mr. Wilkinson:

Q. Is your name Paul S. Russell?

A. Yes, sir.

Q. Where do you live, Mr. Russell?

A. Decatur, Route #3.

Q. Route #3, Decatur. How far is that from town?

A. About seven miles.

Q. How long have you been living in this community?

A. At the present time, about seven years.

Q. What is your business or occupation?

A. Electrician.

Q. And has that been your trade or calling all of your adult life?

A. It has.

Q. How many years' experience have you had as an electrician approximately?

A. Right close to twenty.

Q. Right close to twenty?

[fol. 81] A. Yes, sir.

Q. On July 18, 1951 were you employed here in the Decatur district?

A. I was.

Q. Who did you work for?

A. Wolverine Tube.

Q. Wolverine Tube. What is the technical name of that thing? Calumet & Hecla Consolidated Wolverine Tube Division; is that it?

A. That's right.

Q. And generally known as the copper plant here?

A. Yes, sir.

Q. How long have you been working for the copper plant, or how long on July 18, 1951?

A. I believe that was almost three years at that time.

Q. You work regularly?

A. Yes, sir.

Q. Were you paid by the hour, day, week, month or how were you paid?

A. By the hour.

Q. What was the hourly rate of pay?

A. \$1.75 per hour.

Q. How many hours a day did you work as a general rule?

A. Eight.

Q. So that your daily wage averaged about \$12.00 a day?

A. Approximately.

Q. Was that an average rate of pay at that time, \$12.00 a day, and how many days a week did you work?

Court: That would be \$13.00. Didn't he say \$1.70 per hour?

A. \$1.75.

Mr. Wilkinson: That would be \$14.00, Judge. I was undercounting.

Q. How many hours a week did you work, Mr. Russell, as a general rule?

A. I averaged right close to 50 hours a week.

Q. You averaged close to 50 hours a week. Have you computed what your weekly, average weekly earnings were for the six weeks period previous to this occasion?

A. Slightly over \$100.00 a week.

Q. Slightly over \$100.00 a week?

A. Yes, sir.

Q. For the six months preceding this occasion that is [fol. 82] involved in this law suit?

A. Yes, sir, that's right.

Q. Did you work the day before the 18th of July?

A. I did.

Q. A full day?

A. Yes, sir.

Q. What time of day did you get off from work that day?

A. 4 o'clock.

Q. And how did you travel from the plant to your place of residence?

A. I drove my car.

Q. Traveled by automobile?

A. Yes, sir.

Q. Did you go directly home from the plant, or spend the rest of the afternoon in Decatur, or what did you do after you got off from work?

A. As a general rule, I went directly home.

Q. As a general rule, you went directly home. When you left the plant that afternoon preceding the day in question here, did you know anything about a strike to happen the next morning, or strike to be called, any cessation of work, or any work stoppage, or anything of that kind?

A. I didn't have any definite knowledge of the strike. It had been rumored for months, or even expressions of, "We're going to close the plant next week." They had been negotiating several times per week, and rumors would fly that they were going to close down by a strike.

Q. Did those rumors set any date when it would be closed down?

A. No, sir.

Q. Did you have any knowledge or information that the plant would be closed the next day by strike or otherwise?

A. None whatever.

Q. Did you report or attempt to report for work the next morning?

A. Yes, sir.

Q. You come in a car?

A. I did.

Q. Bring your lunch?

A. I did.

Q. Prepared, ready and willing to work?

A. Yes, sir.

Q. For the record, tell us where the copper plant was located at that time. What street does it abut upon?

[fol. 83] A. The copper plant is located at the end of Railroad Street. The Railroad Street dead-ends into the entrance of the copper plant.

Q. In other words, Railroad Avenue or Railroad Street, as you call it, is that a paved street?

A. Yes, sir.

Q. How wide is the paved surface of that street?

A. I would judge approximately 20 to 24 feet.

Q. And that street you say dead-ends at the entrance of the copper plant?

A. Yes, sir.

Q. Are there any other entrances to the copper plant by means of a street, or were there at that time?

A. There are none.

Court: For the matter of the record, I think that is Railroad Avenue instead of Railroad Street. We have another Railroad Street here in Decatur.

Q. Mr. Russell, I have three photographs that I want to show you and ask you if those photographs show the Railroad Avenue and the entrance to the plant and some of the surrounding territory (handing to witness).

A. (Examining photographs) Yes, they do.

Q. Let's take this picture which I will mark Plaintiff's Exhibit "1" on the back. What street or avenue is that shown in the picture there to be paved?

A. Railroad Avenue.

Q. Railroad Avenue. What is the general direction of Railroad Avenue? Does it run east and west, or north and south?

A. The copper plant is on the east end.

Q. The copper plant is on the east end of Railroad Avenue?

A. Yes, sir.

Q. Is the copper plant shown in that picture?

A. We are looking at it from the copper plant end view.

Q. Looking in the opposite direction of the plant?

A. Yes, sir.

Q. In that picture, there is a railroad track in the foreground. How far is that railroad track that crosses the paved highway from the entrance of the copper plant?

A. I would say something in the nature of 200 feet.

Q. I also have two pictures marked Plaintiff's Exhibit [fol. 84] "2" and "3" that I want to introduce in evidence. Mr. Russell, in this photograph marked plaintiff's Exhibit "1" which shows the concrete road with the railroad crossing it, where is the entrance to the copper plant located? Would that be near the bottom of the picture?

A. Off of the bottom of the picture.

Q. In other words, the camera is looking from the vicinity of the entrance of the plant down that road?

A. Yes, sir. The camera is looking in a westerly direction.

Q. This exhibit "2" which shows part of a structure there and the railroad and also an automobile and a curve in the concrete pavement—which direction is the camera looking there?

A. Looking almost directly at the entrance, at the gate house of the copper plant.

Q. How far is the gate house from the property line?

A. I think it is around 200 feet.

Q. Around 200 feet. There is a little sign board here on the side near the telegraph pole. Does that mark the property line?

A. That sign says something to the effect of "End of public street; private property."

Q. In other words, the sign marks the line between the end of the street and the beginning of private property. Is that correct or not?

A. I think that is about correct. The property line is right close.

Q. Now, in Exhibit "3", tell us which way the camera is looking that made that picture.

A. In this Exhibit "3", the camera is looking directly at the gate house and the plant proper.

Q. That picture also shows that sign on the side of the paved portion, does it not?

A. It does.

Q. Marks the end of the street and the beginning of the private property.

Mr. Wilkinson: We offer each in evidence, if your Honor please, separately and severally.

STATE OF ALABAMA,
MORGAN COUNTY.

I hereby certify that the photographs offered in evidence by the plaintiff as Exhibit "1", Exhibit "2" and Exhibit "3" to the testimony of Paul Russell, being photographs, are of such nature that they cannot be copied into the record; that I have this day placed said exhibits in the [fol.85] hands of the Clerk to be forwarded with the record in this case.

Witness my hand, this August 24, 1953.

Sarah C. Dutton, Official Reporter.

Q. Mr. Russell, what route did you travel on the morning of July 18, 1951 as you approached the copper plant?

A. From down-town Decatur, traveled out Grant Street to the intersection of Railroad Avenue, and turned at the intersection of Railroad Avenue and Grant Street toward the plant.

Q. Is Railroad Avenue from that point to the plant practically straight?

A. It is.

Q. Were you traveling alone, or did you have someone in the car with you?

A. Alone.

Q. By yourself?

A. Yes, Sir.

Q. Did anything happen before you arrived at the plant?

A. Just about a point of the intersection of Grant Street and Railroad Avenue, Ralph Webster was standing in the middle of the street as if to direct traffic.

Q. Is he one of the defendants in this case?

A. He is.

Q. Which one is he?

A. The one in the middle with the suit on.

Q. He was standing in the middle of the street. Did he do anything as you approached?

A. He was signalling cars to stop.

Q. Did he signal you to stop?

A. He did.

Q. Did you stop?

A. I did.

Q. Tell us what happened, or what he said and what you said.

A. I believe there was one or two cars immediately in front of me.

Q. Did they stop?

A. They stopped, so I had to stop. After they had pulled on—I don't know, I believe they turned off to the left on [fol. 86] Railroad Avenue—there was an extension on Railroad Avenue where you could make a turn-around. They turned to the left, and as they got out of my way, I started to go ahead. Ralph said, "You might as well go on home today. We don't need you today. You can't go in."

Q. "You might as well go home today. We don't need you. You can't go in." That was what he said?

A. Yes, sir.

Q. What did you say to him?

A. "Go to hell."

Q. You told him to go to hell? What did you do?

A. I went on up Railroad Avenue toward the plant.

Q. You started to the plant. What did he do, if anything?

A. Not anything.

Q. That was all that was said between you then?

A. Yes, sir.

Q. How far from that point was it to the entrance of the plant from Railroad Avenue, in feet, yards, where you were?

A. My best judgment as to the distance, something on the order of 500 yards or just a little over a quarter of a mile.

Q. A little over a quarter of a mile. In other words, from the point where you were first, where you had the conversation with Webster, to the entrance of the plant from Railroad Avenue is something over a quarter of a mile?

A. Yes, sir.

Q. When you traveled from that point up towards the plant, did anything else happen before you arrived at the entrance?

A. At a point about even with the Alabama Flour Mill's first entrance, Howard Hovis was signalling stops.

Q. Howard Hovis? He one of the defendants in this case?

A. Yes, sir.

Q. Which one is he?

A. One in the middle of the five at the table.

Q. How far was that point from the entrance of the plant? How far had you traveled before you reached that point?

A. That would be about 200 yards, I believe, from the actual entrance of the plant.

Q. About half way from the first stop and the entrance to the plant?

A. Yes, sir.

Q. What occurred there?

[fol. 87] A. I ignored his signal there.

Q. What signal did he give?

A. (Indicating) Pull over.

Q. Did you say anything to him?

A. Not at that time.

Q. Did he say anything to you?

A. No, not at that time.

Q. Were you traveling the paved portion of that public street at that time?

A. Yes, sir.

Q. Were you traveling the paved portion of that public street at the time Webster stopped you?

A. I was.

Q. Did you stay on the paved portion of the street all the time?

A. Yes, sir.

Q. You didn't pull over when Hovis signalled you to pull over?

A. No, sir.

Q. You continued on in the direction in which you were traveling?

A. I did.

Q. How far did you go before anything else happened?

A. Something on the nature of 50 yards, I imagine.

Q. What happened then?

A. There was a picket line; a circle of pickets in the street, and between the pickets and myself were several groups of people and another man stopping cars.

Q. You know what that man was?

A. I had never seen him before, but I thought he was a union official.

Q. Did he say anything that led you to find out who he was?

A. He questioned me. His first question was, "Hourly or salaried?"

Q. This man that came to you at that time asked you whether or not you were hourly or salaried, is that right?

A. Yes, sir.

Q. What did you tell him?

A. "What difference does it make?"

Q. Did he tell you who he was?

A. He had not before he asked me, "Hourly or salaried".

Q. You said, "What difference does it make?"

A. Yes, sir.

Q. What did he reply?

[fol. 88] A. "If you are salaried, you can go on in. If you are hourly, this is as far as you can go." He further identified himself by saying that, "I am the Regional Director in charge here."

Q. According to his statement, he was the Regional Director in charge?

A. Yes, sir..

Q. Have you seen that man in the court room this morning?

A. Yes, I think he was here earlier.

Q. Is he here now?

A. (Looking around) No, sir.

Q. You don't recognize any of the gentlemen over at the table as the man that told you he was the Regional Director?

A. No, sir.

Q. Were there employees at the plant who worked on a

salary basis, so much per week and per month, as distinguished from the hourly rate of pay?

A. Sir?

Q. Were there employees at the plant or some departments who were paid on a salary, that is, so much per week and per month, as distinguished from men on the hourly basis?

A. The supervisory and technical employees were on the salary basis.

Q. And you were in what? The production department?

A. The maintenance department. The maintenance department and the production departments were on hourly pay.

Q. When you asked him what difference it would make whether hourly or salaried, what did he say?

A. He said that, "If you are salaried, you can go on in. If you are hourly, this is as far as you go."

Q. Now, how many people were in that picket line at that time, in your best judgment?

A. I would judge 25 or 30.

Q. 25 or 30. What were the pickets doing?

A. Walking in a circle with picket signs; carrying picket signs.

Q. Walking in a circle and some were carrying picket signs. How close together were they?

A. About one stop behind each other; about three feet apart, I imagine.

Q. At intervals of about three feet. Where were they walking?

A. Directly in the middle of the street in a circle that completely extended across the street.

Q. The picket line, as I understand it, was on the paved [fol. 89] portion of the highway, extended all the way across and in front of the entrance of the plant?

A. Yes, sir.

Q. Was there any way to get in the entrance of the plant without getting through the picket line?

A. No, sir, there was none.

Q. Was your automobile running, or had you stopped when you were talking to this man about being hourly or salaried?

A. Coming up to that point, at the point where Hovis signalled me to stop and I went on by him, there were scattering groups of people in the street, so I proceeded slowly on up toward the picket line, and as I got within about 20 or 30 feet of the picket line, I could feel some drag on the car, and of course I stopped.

Q. You felt something dragging on the car and you brought your car to a stop?

A. And also that is the point where the union official asked me whether I was salaried or hourly. He was standing right in the street as if to direct traffic.

Q. When your car came to a stop, what happened?

A. There was where he asked me "Hourly or salaried?" I said, "What difference does it make?" He told me, "If you are salaried, you can go in; if you are hourly, this is as far as you go." He introduced himself by saying he was Regional Director and in charge, and that I was blocking traffic and he asked me to turn around and get out.

Q. What was the picket line doing all that time?

A. They continued to circle the street.

Q. Was your car surrounded by any persons on that occasion at any time?

A. Not right at that point. While he was talking, while this union official was talking to me, Howard Hovis also came to the side of the car. I don't know where he came from. He (whoever the official was), he and the official were both leaning on the side of the car and talking to me.

Q. What did they have to say to you?

A. I told them that I wasn't blocking traffic; that I wanted to go straight ahead, and if I could go straight ahead, the line would be moving.

Q. You mean the line of traffic?

A. Yes, sir.

Q. What did they say?

A. During the time I was talking with the union official, [fol. 90] Howard Hovis was shaking his finger and fist, pointing at me. "Paul Russell, I knew you would be one of the kind that would try to cross this picket line."

Q. "I knew you would be one of the kind that would try to cross this picket line?"

A. More or less like that.

Q. Did you see any clubs or sticks in the hands of the picketers on that occasion?

A. Not on that occasion, except the picket signs themselves were on 2 x 2 boards or planks.

Q. But you saw no clubs or sticks as such at that time?

A. No, sir.

Q. What did you say to Hovis when he made the remarks you attribute to him?

A. I didn't say anything to him. I didn't see any use of arguing with him.

Q. Did you speak to the union official?

A. Yes, sir.

Q. Did he have anything to say?

Q. "You should have more respect for your fellow-workmen than to try to break through a picket line."

Q. "You sohuld have more respect for your fellow-workmen than to try to break through a picket line?"

A. Yes, sir.

Q. What did you say?

A. I told him that I thought they shiould have more respect for a person who wanted to work than to try to prevent him from working.

Q. What did he say?

A. Several other people came up and several arguments and just short conversations back and forth.

Q. Give us the substance, if you can. Tell us what was said by you and others in your immediate presence and hearing.

A. The union official told me again that I was blocking traffic, because there were several cars collecting behind me, so he kinda stepped away after we had argued just a few minutes, for a very few minutes. He told me again that I would have to turn around and get away; that I was holding up traffic, so of course I didn't move. I told him I was only wanting to go straight ahead; and every time somebody moved, I moved toward the entrance of the plant.

Q. Every time somebody moved, you moved on toward [fol. 91] the entrance of the plant?

A. Yes, sir.

Q. The picket line between you and the entrance of the plant?

A. It was.

Q. What was on the right side of the paved portion of the road at that time? What was the nature of the terrain?

A. There was a railroad siding or spur track there.

Q. By right side, I mean the right side going in the direction of the plant. That was occupied by a railroad or railroad siding?

A. Yes, sir.

Q. Any way you could traverse that and get in the plant in an automobile?

A. No. At approximately on the boundary line of the plant property where the sign is in the picture, there is another railroad spur track with good high tracks you couldn't cross.

Q. What was the nature of the terrain on the left hand side?

A. It was level, but still crossed by the siding that, I believe, goes into the Alabama Flour Mill and into the river-side of the copper plant.

Q. Any drainage ditch over there that you recall?

A. I don't believe there is a ditch.

Q. Your car was headed straight ahead in the direction of the plant at all times?

A. Yes, sir.

Q. You said there were groups of people around there. Where were they grouped with respect to the paved portion? Right hand side? Left hand side, or both?

A. There were small groups, two or three, all along in the street, but on the right hand side or immediately right of the actual picket line itself was a group of people I would estimate it from one to one hundred and fifty people.

Q. Union or non-union, workers or non-workers? Who, if you knew?

A. I don't have any actual proof—

Mr. Adair: We object, if he doesn't know. I object to him speculating as to who it might have been.

Court: Of course, if the witness doesn't know, he can't tell what he thinks.

Mr. Wilkinson: We don't want him to do that.

Q. Just tell what those people did while you were there.

[fol. 92] A. At the time that the union official first made his question, "Hourly or salaried" and about the time I answered him, "What difference does it make?" several cries came from over in that group of people right by the picket line: "He is just a red apple electrician. He can't get in."

Q. "He is just a red apple electrician. He can't get in." What is the significance of that expression?

A. Sometime prior to the strike, the union committee, or, in other words, the union boys coined the idea of using "red apple" for those who were loyal to the company or against the union. They used it with the idea of being apple polishers. They would stick apples on the lockers or tool boxes, or call him a red apple.

Q. That was a term they used against the boys not with the union?

A. That's right.

Q. Did you see any people exchange places in the picket line from time to time with others in the picket line?

A. They were doing that constantly. Men carrying the signs—somebody else would walk in and take the sign and he would get out.

Q. In addition to this group over on the right, any people over on the left?

A. A small number.

Q. Any of them participate in the picketing?

A. Some of them were making remarks, calls.

Q. Mr. Russell, use your best judgment of the people on the left you saw going towards the plant.

A. The number of people?

Q. Yes, sir.

A. I believe it would be about 50 people on that side.

Q. A group not as large as the group on the right hand side?

A. No, sir.

Q. What time was it when you arrived that morning to report for work?

A. It was—I usually got there about 15 or 20 minutes before 8.

Q. Eight was the starting time?

A. Yes, sir.

Q. You report for work at eight, start working at 8 o'clock?

A. Yes, sir.

Q. And usually get there a few minutes before work started?

A. Yes, sir.

Q. So it was somewhere in the neighborhood of 15 until 8 when you stopped there?

[fol. 93] A. Yes, sir, about that.

Q. In the morning?

A. Yes, sir, that's right.

Q. Did anything else happen while you were down there in the vicinity of the picket line trying to get in the plant?

A. A bus came up. I remember distinctly several cars had been passed on into the plant. A bus came up behind me and this—I was still right in the middle of my side of the street. So the union official came back over and again told me I was blocking traffic and I would have to move. I told him I had as much right to be in that street as they had, and if they would open in front, nobody would be blocking traffic, but I refused to move. He stepped back from my car and motioned to the picket line and waved them aside, and they opened on the left hand side of the street, and the bus passed around me.

Q. The bus passed around you on the left hand side and then the picket line opened on the left hand side and the bus passed in on the left hand side of the street?

A. Yes, sir.

Q. Was the bus empty or loaded?

A. I didn't notice, but I think it was pretty well empty.

Q. What did you do when the bus passed around you?

A. I tried—I started up my car and moved to follow the bus through.

Q. What happened?

A. As soon as I started moving, somebody yelled from the right, "He's going to try to go through." Somebody else yelled, "Looks like we're going to have to turn him over to get rid of him." Several took that up, "Turn him over."

Q. What happened at the picket line?

A. The picket line crowded between me and the bus crossing the street.

Q. Crowded between you and the bus crossing the street?

A. Yes, sir.

Q. Did they get between you and the bus and across the street?

A. They closed off the street before I could get in that position.

Q. No way you could get in the plant without going through the picket line or over it?

A. That's right.

Q. How long did you remain there on that occasion?

[fol. 94] A. About an hour and a half or two hours. I think I left about 9:45.

Q. How many attempts had you made to enter the plant before you left there? You tried to get in before the bus came?

A. Yes, sir.

Q. And you tried to follow the bus in?

A. That's right.

Q. Did you try any more?

A. I tried easing on up into the picket line. I moved into the picket line until I had, instead of there being a round circle, it was an elliptical circle, and at that time the pickets started walking and turned their signs down with the 2 x 2's facing in the direction of the car.

Q. Did they touch the car with the 2 x 2's?

A. Some of them did.

Q. How long did that position continue where they were pointing the 2 x 2's at the front of your car?

A. After I had sit still for a while, they resumed their marching, but as I would start edging forward, that would happen.

Q. Sometimes you tried to edge up and they would point the 2 x 2's at the car and stop walking. Is that correct?

A. That's right.

Q. Something was said in the opening statement about your attempting to run over the pickets. Did you attempt to run over anybody on that occasion?

A. No, sir, I didn't.

Q. You stayed there, I believe you said, until about 9:45?

A. That's right.

Q. How did you get away?

A. It was getting pretty warm and it was impossible to

stay in the car as hot as it was. I was pretty well satisfied in my own mind I could not get through without trying to run over somebody or else getting turned over. I backed out and went on home.

Q. You backed out and went on home?

A. Yes, sir.

Q. During the time you were there, did you or not perceive a number of employees in the maintenance and production departments in the vicinity of the entrance to the plant with their lunches with them?

A. Oh, yes, quite a few, because of the fact when they were being parked, the sides of the street was lined with parked cars. The side of Railroad Avenue was lined with parked cars clear to the intersection of Grant Street, and [fol. 95] then for about a block on Grant Street.

Q. Whose cars were parked there?

Mr. Adair: I object, unless he knows.

A. Know part of them.

Court: Go ahead.

A. Some of the cars were union and some non-union men's cars.

Q. Were employees of the plant there?

A. Employees of the plant were there.

Q. And you saw a number of those employees there with their lunches?

A. Yes, sir.

Q. Did they remain any appreciable time or leave the vicinity when they approached the picket line?

A. It was quite a few that stayed around for, say, 30 or 40 minutes, but they gradually dwindled away and went home.

Q. Did you see any other employee endeavor to enter the picket line and was turned back?

A. They would come up by me and turn back.

Q. How many in all would you judge, in your best judgment, did you see with lunches, prepared to go to work, and were turned back.

A. I would estimate something on the nature of 200 people.

Q. Something on the nature of 200 people?

A. Yes, sir.

Q. How many employees were there in the plant at that time, in the production and maintenance department?

A. I believe slightly over 500 at that time.

Q. Slightly over 500 at that time?

A. Yes, sir.

Q. In the production and maintenance department?

A. Yes, sir.

Q. They worked a third shift at that time?

A. Yes, sir.

Q. How many employees were on the first shift?

A. I believe it would—the majority of the people worked on the first shift. It was the bigger shift. I think it would be about 300 people, 325.

Q. That first shift started to work at 8 and when did they get off?

A. 4 in the afternoon.

Q. Started at 8 and got off at 4 in the afternoon. And [fol. 96] the second shift went on at what time?

A. At 4 o'clock until midnight.

Q. 4 until midnight. And the third shift from 12 midnight to 8 in the morning?

A. That's right; yes, sir.

Q. That was the schedule that was in effect at that time?

A. Yes, sir.

Q. While you were there, I will ask you whether or not you saw the bus and also automobiles bringing people on the third shift out of the plant?

A. Yes, they did come out. They started coming out about 5 after 8.

Q. Some came out by bus and some by their own cars?

A. Most of them came by their own cars.

Q. Most of them came by their own cars?

A. Yes, sir.

Q. After this occasion on July 18, I believe, in 1951, did you at subsequent times go back out there to see what the situation was?

A. I did; yes.

Q. How many trips did you make out there in all?

A. Just twice during the time of the strike in addition to the first morning.

Q. Sir?

A. Two times after the first morning.

Q. How long after the first morning was it before you made the next trip out there?

A. I believe it was during the next week. In other words, that would be about 7 or 8 days.

Q. 7 or 8 days afterwards?

A. Yes, sir.

Q. When you went back there, was the picket line still there?

A. Yes, sir.

Q. How long did you wait before you went back the next time?

A. The night of the 21st of August. The day before we returned to work.

Q. The day before you returned to work?

A. Yes, sir.

Q. Was the picket line out there then?

A. Yes, sir.

Q. And you didn't go out there between those visits at all? [fol. 97] A. No, sir.

Q. Were you in contact during that time with other employees of the plant and discussed the condition out there from time to time?

A. I was; yes, sir.

Q. I will ask you if you learned from those sources that the picket line was continuously in operation out there?

A. Yes, other people, friends would go out, would tell what they saw, who was out, and so forth.

Mr. Powell: We object to that and move that it be excluded as hearsay.

Court: Well, of course, what he heard said is not admissible.

Mr. Wilkinson: I am going to ask for details. All I want from the witness is the contact with his fellow-employees, he learned the picket line was continuously maintained.

Court: Alright.

Mr. Powell: Reserve an exception.

Court: As I understand the evidence, he had information that the picket line was still maintained, and there was no objection to that; and I will overrule the motion to exclude.

Q. I will ask you if, during the period subsequent to your first attempt to enter the plant and your resuming work, if you were informed by any of your fellow workers, who were also idle during that time, of threats that were made, against anyone who attempted to work out there?

Mr. Powell: We object for the same reason and also on the ground he is asking a leading question.

Court: Sustained.

Mr. Wilkinson: We except.

Q. In the opening statement of counsel for the defendants in this case, there was some reference made to your taking part in a back to work movement of the employees out there. Tell us what your connection was with that movement, where it originated, how it originated, and what part you played in it.

A. In talking with different friends of mine—some were union and some non-union—all of us hated to be out of work, so several of us decided to see if we could not do something about it. Anyway, we decided that we would try to get a petition up and see if we could not in some way get back to work; so we went to Mr. Harris and asked him what he could help us out on such movement.

Q. Mr. Norman Harris here?
[fol. 98] A. Yes, sir.

Q. Who was the committee?

A. The four of us who went to see Mr. Harris was Frost, Mr. Kirby, Mr. McCoy and myself.

Q. Did you all eventually get back to work out there?
A. We did.

Q. What day did you go back to work out there?

A. I believe the date is the 22nd of August.

Q. You were out of work from this 18th day of July to the 22nd of August?

A. I think that is right.

Q. Did you have any other employment during that time?

A. No, sir.

Q. On the 22nd day of August, I will ask you if a large number of Highway Patrolmen was stationed at the entrance of the plant?

A. They were, yes, sir.

Q. Did they open the picket line?

Mr. Adair: I object to that; that calls for a conclusion as to whether or not they opened the picket line.

Q. Was the picket line opened?

Mr. Adair: I object on the same ground. I do not object to the facts of what happened, but that still calls for a conclusion.

Q. Did the picket line open when the Highway Patrol got there?

Mr. Adair: I object on the same ground; calls for a conclusion.

Court: It's not a conclusion that it actually opened, is it?

Mr. Adair: He is assuming in the question that was the opening of the picket line; whereas, the company advertised in the paper the day before they were going to open.

Court: Wasn't the question: "Was the picket line opened?"

Mr. Adair: "Opened by the patrol."

Mr. Wilkinson: I just asked if it was opened.

Mr. Adair: I withdraw the objection.

A. The picket line was opened and we did resume work.

Q. Were the Highway Patrol there when it was opened?

Mr. Adair: We object.

Court: Overruled.

[fol. 99] Q. Were the Highway Patrol present?

A. They were.

Q. Were there also some members of the police force of Decatur there on that occasion?

A. They were.

Q. And what time that morning did you go to work, report for work?

A. About 25 until 8.

Q. About 25 until 8?

A. Yes, sir.

Q. At the time you went to work on the 22nd of August, did you go in the plant by yourself or did you go in a convoy with other employees?

A. I rode with several other employees that morning.

Q. How many employees went in that morning?

A. About 230.

Q. Did you all go in singly or form a group and march in?

A. We had spread the word and arranged to meet on Sixth Avenue South and grouped up and moved in a convoy.

Q. And went on down Railroad Avenue?

A. We went over to Grant Street from Sixth and down Grant Street to Railroad Avenue and into the plant.

Q. Anybody escort you down there?

A. No, sir.

Q. I show you some pictures—

Mr. Powell: We want to object to any evidence as to what happened on the 22nd of August. It is immaterial, illegal, incompetent, because the pleadings in the case limit the reception of the evidence to the 22nd of August, 1951.

Mr. Wilkinson: We don't think he is correct, but if he is, we will ask leave to include that date.

Court: How does it read?

Mr. Powell: "From, to-wit: July 18, 1951 to August 22n-, 1951" in the first count.

Mr. Wilkinson: Also, if your Honor please, I might suggest we think the rule is that anything that happened within a reasonable time, before or after, that tends to shed light on the incident in question would be relevant under the well known rule that the main event can be corroborated or denied by prior or subsequent circumstances that lead to it.

Court: Is any change in the complaint?

[fol. 100] Mr. Powell: We don't find that in the second count of the complaint.

Court: Overruled.

Mr. Powell: We except.

Q. I show you 4 photographs and they are marked on the back plaintiff's exhibit "4", "5", "6", "7" in order to

identify them. I will ask you to look at those photographs and tell us if they correctly and accurately show scenes out there at the time you say you started to work that morning?

A. (Examining pictures) They do.

Q. Can you identify any of the persons in those pictures?

Mr. Powell: We would like to have the opportunity to ascertain if these pictures were made by this witness and if made on the 22nd day of August.

Mr. Harris: I can answer that for you. They were made by Billy Smith of The Decatur Daily, and he tells me they were made on the morning of the 22nd as they went to work.

Mr. Powell: If they offer proof they were made on the 22nd of August and not subsequent to that date, we have no objection, but if the testimony should show they were made subsequent to that date, we ask that they be excluded.

Q. I am not asking about subsequent to August 22nd. I mean that morning that they went to work.

A. That is the 22nd.

Q. Did you ever say whether you can identify any individual shown in the picture, plaintiff's Exhibit "7"?

A. An Arnett boy from Athens is the one that isn't driving. Fayne Peck is one of the union members standing on the side. I can't identify any of the other people in the car.

Q. Picture No. 6. Can you identify anybody in that?

A. Fayne Peck is the only one that I can call the name of. I recognize faces, but that is the only person I know the name of. I believe his other name is Coleman Peck.

Q. Is the individual referred to as Mr. Peck, is that the one that's got his finger pointing in the picture?

A. That is.

Q. Looking at picture No. 5—

Mr. Adair: I would like to renew our objection to the pictures and picture testimony that it supposed to portray a situation on the 22nd of August. There is nothing charged [fol. 101] in the complaint against the defendants that alleges that this plaintiff did not get in to work on the 22nd. What happened on the 22nd day of August is immaterial for the purpose of this cause. We stipulate he went in to work on the 22nd.

Mr. Wilkinson: You don't stipulate how he got in.

Mr. Adair: This is just getting away from the actual evidence.

Court: Before I make a final ruling, I would like to look at the pictures. I haven't seen them.

Mr. Adair: Would your Honor look at them before they show them to the jury?

Court: I will look at them as soon as they finish.

Court: The objection will be sustained as to Count 1 and overruled as to Count 2.

Mr. Adair: We reserve an exception.

Q: I show you pictures 5 and 6. Can you identify anybody in those?

A. That is Fayne Peck in the picture with his finger pointing; in 6.

Q. Do you know who the man is with his fist doubled up?

A. No, I can't name him.

Q. You're looking at picture 5. You recognize anybody in that picture?

A. That's Ellis Lane (indicating).

Q. Was he one of the employees out at the plant?

A. He was on the picket line at that time. He returned to work shortly after that.

Q. He was working at the plant at the time the strike was called?

A. Yes.

Q. No. 7. Do you identify anybody in that picture?

A. I did. That is Arnett in the car.

Q. No. 4. Do you identify anybody in that picture?

A. That's Palmer driving the car in that picture. N. D. Palmer.

Q. Was he an employee out there?

A. He was and is.

Mr. Wilkinson: We offer each of the pictures in evidence, separately and severally.

Mr. Adair: We renew our objection on the same ground.

Court: Sustained as to each of them as to Count 1. Overruled as to each of them on Count 2.

Mr. Adair: We except to the ruling of Count 2.

Mr. Harris: We except as to the ruling of Count 1.

[fol. 102] STATE OF ALABAMA,
MORGAN COUNTY.

I hereby certify that the photographs offered in evidence by the plaintiff as Exhibit "4", "5", "6" and "7" to the testimony of Paul Russell, being photographs, are of such nature that they cannot be copied into the record; that I have this day placed said exhibits in the hands of the Clerk to be forwarded with the record in this case.

Witness my hand, this August 24, 1953.

Sarah C. Dutton, Official Reporter.

Q. When you returned to work, did you work all day?

A. Yes.

Q. Did the other men work all day?

A. Yes, sir.

Q. Was there a picket line there when you came out?

A. Yes, sir.

Q. Highway Patrol still present?

A. Yes, sir.

Q. Police Officers of Decatur still present?

A. Yes, sir.

Q. Did you get through the picket line coming out?

A. Yes, sir.

Q. Not molested at all?

A. Yelled at was all.

Q. What did they yell?

Mr. Adair: I object as immaterial.

Court: That is sustained as to Count 1; overruled as to Count 2.

Adair: I except to the ruling of Count 2.

Mr. Harris: I except to the ruling of Count 1.

A. "There goes that scabby son-of-a-bitch." "Scab Russell." Many yells of "Scab." Other yells, "We will get you yet."

Q. That was when you came out that afternoon?

A. Yes.

Q. Any yells that morning when you went in?

Mr. Adair: We object to "were there any yells" without identifying who was doing the yelling.

Court: That's probably right. Unless it came from one of the conspirators, it would not be admissible.

[fol. 103] Q. Could you tell who was yelling?

Mr. Adair: I move to exclude the evidence that has previously been given.

Court: Motion sustained.

Mr. Harris: Would your Honor hear us on that. It is going to come into the case a good many times before it is over.

Mr. Adair: Might we ask that it be out of the presence of the jury?

Court: Yes, sir. Mr. Bailiff, take the jury in the room.

Jury is removed from the Court room.

Counsel for plaintiff and counsel for defendants then make their argument to the Court.

(Close of day—Court adjourned.)

9 o'clock A. M., June 4th

COLLOQUY BETWEEN COURT AND COUNSEL

Court: As I understand the evidence so far is that the plaintiff went out of employment on the 18th day of July by reason of the stoppage and being told that he couldn't enter, etc.; that he went back twice, I believe, and the third time on August 22nd at 25 until 8 he went back with others, went in unmolested and went to work and continued thereafter. Now, in the Encyclopedia of Evidence, the law is stated this way:

"Time and Acts of Declaration: In order that evidence thereof be admissible, the acts and declarations of the supposed co-conspirators must be those only which were made during the pendency of the wrongful enterprise and in furtherance of its object. Such acts and declarations of the members of the supposed conspiracy are not admissible if made after the common enterprise is at an end, except as against the party who made them."

As I understand, this man, under his evidence, went back to work as I said at 25 until 8 on the 22nd day of August. I don't think any declarations that were made following that

time are admissible. I think the declarations of the crowd that were inspired during the period of time that he was kept out of work until the time he went back are admissible.

Court: Sustain the objection.

Mr. Harris: We reserve an exception.

[fol. 104] (Herein; plaintiff amends his complaint)

(Defendants answer)

Jury is removed from Court room.

(Amendment is argued by counsel.)

Counsel for defendants move to strike Count 3. Motion is overruled. Defendants except.

Counsel for defendants move for continuance on surprise.

Argument of counsel on theory of surprise.

Jury brought back:

Court: Gentlemen of the jury, owing to the ruling of the court on the questions of evidence, it became necessary to alter the pleading in this case, and according to counsel, that necessitates further and additional investigation. It is the purpose of the court, as well as the lawyers and of the jury, to see that everybody gets a fair chance to try his law suit by presenting all the facts before the jury. What I am going to do is going to work a hardship on all of us—

Mr. Harris: If your Honor please, if Mr. Wilkinson will agree, it is al-right with me to withdraw Count 3 of the complaint.

Jury is taken out of Court room.

Mr. Harris: Our decision will depend on whether or not we correctly understand your Honor to state what your ruling would be. As I understand, your idea of the law is this: That any occurrence that took place up to the time that Mr. Russell entered the plant would be admissible.

Court: That's right.

Mr. Harris: Anything after that would not be admissible. With that understanding, we are prepared to withdraw Count 3.

Mr. Adair: We have no objection to that.

Jury is brought back to Court room.

Mr. Adair: In view of the ruling of the court, we move to exclude that testimony of the plaintiff.

Court: Sustained.

Mr. Harris: Reserve an exception.

Court: Gentlemen of the jury, the ruling of the court—I want to make this plan to you so that you will understand my meaning—the ruling of the court is that whatever took place in the way of intimidation, yelling or slander or re-[fol. 105] marks that followed the time that the plaintiff went into the plant on August 22nd, anything that happened after that with reference to insults, the Court is of the opinion that isn't admissible and has sustained an objection ruling that out, and you will not consider that for any purpose.

Mr. Wilkinson: Reserve an exception.

Mr. Poell: We would like to make the same motion as to Exhibit "4" and Exhibit "5", "6" and "7", photographs, that went into evidence.

Court: On that, I think the witness said they showed the condition at the time he entered. Overrule that.

Mr. Powell: Reserve an exception.

Q. Mr. Russell, I want to show you a full page ad in The Decatur Daily, Monday, August 20th, 1951, and I will ask you to step over here and look at it. (Indicating Daily newspaper file on counsel's table).

A. (Witness goes to the table).

Q. I will ask you if you saw that advertisement before you went back to work on August 22nd?

A. I did, yes, sir.

Mr. Wilkinson: We offer the advertisement in evidence, if your Honor please, and ask permission to read it into the record to avoid the necessity of keeping the newspaper file.

Mr. Adair: May I suggest that if I may be of assistance, I have one of the ads here not fastened in my file. I will hand it to you.

Mr. Wilkinson: We offer the advertisement furnished by my learned friend from Atlanta and pass it to the jury for their inspection, and ask that it be marked Plaintiff's Exhibit "8". Said Exhibit "8" is in the following words and figures, to-wit:

"THE DECATUR DAILY, TUESDAY, AUGUST 21, 1951 Page Three

NOTICE
ALL EMPLOYEES
WOLVERINE
TUBE DIVISION

THE DECATUR PLANT WILL RESUME OPERATION ON
WEDNESDAY, AUGUST 22, '51

You are requested to report for work
on the Day Shift at 8:00 A. M.

- [fol. 106]. If you were not employed on the Day Shift prior to the strike, you will be reassigned to your regular shift at a later date.

WOLVERINE TUBE DIVISION
OF

CALUMET AND HECLA CONSOLIDATED COPPER COMPANY
DECATUR, ALABAMA."

Q. Mr. Russell, I neglected to ask you yesterday whether or not you were a member of the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (CIO) at the time the strike occurred out here?

A. I was not a member.

Q. Ever been a member of that organization?

A. I have never been a member of that organization.

Q. I believe you testified on yesterday you were an electrician. Is that correct?

A. Yes, sir; I am an electrician.

Q. Were you an electrician out at the plant, employed as an electrician?

A. Yes, I was employed by the plant as an electrician.

Q. What duties did you perform in connection with your employment as an electrician?

A. General maintenance work on electrical equipment, motor control, and special jobs, or kinda in line with my previous experience. I performed work, maintenance repair on the instruments that controlled the different furnace operations, on the public address system, on the clock

system. What time I wasn't busy with my special jobs or special assignments was spent on general over-all maintenance.

Q. Mr. Russell, what did that plant manufacture at that time?

A. Copper tubing.

Q. Will you explain to the jury as briefly as you can the process followed in the manufacture of copper tubing?

A. The first step in the manufacture of copper tubing, the copper and various metals are melted together in an electric induction melting furnace to produce the proper alloy or different brasses for their production. These are cast into billets which are cylinders about eight inches in diameter, about eight feet long, and weighing 1500 pounds. [fol. 107] These billets are cut into blocks twelve to fifteen inches long and transferred to another furnace and heated.

Q. That an electric furnace?

A. The next furnace is gas operated but electrically controlled. Heated to a temperature of 1600 degrees; then transferred to a press, hydraulic press, which extrudes a base tube which is about two and one-half inches in diameter with a quarter of an inch wall and about thirty feet long. All of the presses are electrically controlled. From the base tube, the tube is then transferred to draw benches, a machine for drawing the tube through a die to reduce the diameter down to any desired size. It goes through the draw benches until it is worked down even to a one-sixteenth inch tube.

Q. Your duty in that connection was to keep the electrically controlled apparatus in order and do whatever is necessary to see they function properly?

A. That's right.

Q. I will ask you whether or not prior to the time of July 18, 1951 you were invited to attend a union meeting here in Decatur?

A. I was invited several times to attend union meetings.

Q. Who invited you?

A. Mr. Hovis and Mr. Webster, I believe, on that particular occasion.

Q. Two of the defendants?

A. Yes, sir.

Q. Did you go to the meeting?

A. I did.

Q. Did you see a man by the name of Michael Volk there?

A. Yes, sir, he was there.

Q. Did he address the meeting?

A. Yes, sir.

Q. What was his connection with this International Union?

A. I can't give his title. I don't know it. His headquarters are in Birmingham. He seemed to be the agent who connected the Local with the International CIO.

Q. He was the man between the Local and the International organization?

A. I think so.

Q. Did you work at the plant when it first opened?

A. I did, yes, sir.

[fol. 108] Q. How many men were employed and engaged in producing tubing when it first opened?

A. Approximately 45 hourly paid employees were working on the first opening day.

Q. And the number of personnel were increased from time to time as business increased?

A. As its people learned those jobs and were able to teach others, more new people were brought in.

Q. Were they producing tubing with the 45 men who worked there when the plant opened?

A. They were.

Q. Were you a man of a family on the 18th of July, 1951? Did you have a family, married or single?

A. Married.

Q. Have children?

A. No, sir.

Q. Just you and your wife?

A. Yes, sir.

Q. You lived about how far from town?

A. Seven miles from Decatur.

Take the witness.

Cross examination.

By Mr. Adair:

Q. Mr. Russell, you were working at the plant when the organizational activity started out there before getting a collective bargaining agent?

A. Yes, sir.

Q. Is it true that two of the defendants here, Mr. Hovis and Mr. Webster, were electricians also?

A. That's right.

Q. They worked with you, did they not?

A. Yes, sir.

Q. Did you have a good many discussions with the defendants about whether or not you thought they should have a union?

A. That's right; yes, sir.

Q. You took one side and they took the other, didn't you?

A. That's right.

Q. After you appeared out at the plant gate on the 18th of July when you say that you went out in your automobile, [fol. 109] you said you couldn't get in. When you left there, did you get in touch with your employer to find out whether or not there was work there available?

Mr. Wilkinson: We object; there's no evidence of that. I don't understand that he got inside the plant.

Q. After you left on the 18th, did you contact them to find out whether or not there was work there or not?

A. I did not.

Q. Did you contact your employer any time between the period of the 18th of July to August 22nd to find out whether or not there was work there for you?

A. I assumed there was no work.

Q. Did you contact your foreman or employer to find that out?

A. I didn't.

Q. Did anybody contact you and tell you there was work there for you, any foreman or supervisor?

A. By the notice in the paper, yes, sir.

Q. Prior to the notice saying that the plant was going to reopen, did any of your foreman or any management or

supervisor of the company get in touch with you and tell you there was work there for you?

A. I think a letter came stating about the same thing as the paper.

Q. That was on or about August 19th just before the plant reopened, was it not?

A. That is near the date, yes, sir, that I was notified by letter—about the 18th or 19th. Anyway, after the date of this publication.

Q. Mr. Russell, I hand you a form letter, mimeographed letter, on the letter head of Wolverine Tube Division dated August 20, 1951 and ask you if that is the letter you refer to?

A. (Examining letter) Yes, sir, this is the letter that I received.

Mr. Adair: We would like to have the Reporter mark this letter as Defendants' Exhibit "1". I would like to offer Defendants' Exhibit "1" in evidence.

Said Exhibit "1" for the Defendants is in the following words and figures, to-wit;

"WOLVERINE TUBE DIVISION"

Calumet and Hecla Consolidated Copper Company
Incorporated
Phone 2800
Decatur, Alabama

August 20, 1951

To All Employees:

[fol. 110] "The Decatur Plant will resume operations on Wednesday, August 22, 1951.

"You are requested to report for work on the Day Shift at 8:00 a. m.

"If you were not on the Day Shift prior to the strike you will be reassigned to your regular shift at a later date.

WOLVERINE TUBE DIVISION

Manufacture of Seamless Non-Ferrous Tubing."

Q. Mr. Russell, you testified on direct examination that you went out on the morning of the 18th to go to work; that you didn't get in. Your suit here covers the period

from the 18th of July to August 22nd. Did you try to go in that plant on any occasion other than the 18th of July?

A. I went out to the plant on two other occasions.

Q. Did you go out and try to get in on the two occasions?

A. The picket line was still there, and since I had had trouble with the picket line, I didn't try to push through again.

Q. You testified in a hearing here about ten days ago, a labor board hearing?

A. That's right.

Q. And in answer to my question on that occasion on the same subject, you testified you went out on two other occasions, did you not?

A. That's right.

Q. And in answer to my question, you testified: "I went merely to observe." Did you or did you not?

A. I don't remember that.

Q. I will read you the question and ask you to refresh your recollection: "Did you go back again to the picket line after July 18th for the purpose of observing or for any other purpose?" You recall that question?

A. I have been asked so many questions, I don't recall that particular question, but if you have it there, I must have said it that way.

Q. And when I asked you if you went to satisfy your own curiosity, you said, "That's right." Did you testify to that? (Showing to witness.)

A. Yes, I went out there to satisfy my own curiosity as to whether the picket line was still there and whether I could get in or not.

Q. The very next question I asked: "You were not going out to try to get in to work, were you?" You said, "No." I will hand you the official transcript.

A. I didn't try to force my way in on those occasions.

Q. I will ask you again if you didn't answer "no" to that [fol. 111] question whether or not you were going out trying to get in to work?

A. I don't deny that answer at all. No, sir.

Q. As a matter of fact, Mr. Russell, after July 18th when you left that picket line, you got together with some people to organize a "back to work" movement, did you not?

A. Yes, sir, that's right.

Q. Were you the leader of the back to work movement?

Mr. Wilkinson: We object to that; invades the province of the court and of the jury.

Court: That calls for a conclusion. Sustained.

Q. Mr. Russell, as far as you know, were you the first individual who initiated the back to work movement?

A. No, I was not the first one.

Q. Who was?

A. I do not know.

Q. Mr. Russell, in this hearing again that you testified in last week, you stated—I will ask you if you didn't that you, along with James Kirby and Daniel McCoy, initiated the idea of a back to work movement?

Mr. Wilkinson: We object, unless the witness is shown the record.

Q. Take a look there (showing record to witness).

A. We initiated the idea of the petition that was submitted. The petition was carried—worded and written by Mr. Harris and was submitted to the company.

Q. What was that petition in substance, to the best of your knowledge?

A. The substance of that petition was this: That we were ready and willing at any and all times to resume work with the same conditions that existed at the time of the work stoppage.

Q. Mr. Russell, isn't it true that this petition you are talking about, it was addressed to the company?

A. I believe that is right, yes.

Q. The petition was for delivery to the company—not the union?

A. That is right.

Q. Isn't it true that when you carried your petition up to Harris, your attorney here, that the original petition that you carried him read in substance: "If the company will reopen its gates, we will cross the picket line and return to work?"

A. I don't know what the original petition said.

[fol. 112] Q. Did you testify to this, what was contained

in the original petition at the hearing I spoke to you a moment ago about ten days ago?

A. I just don't remember.

Q. Did you testify on that subject?

A. I don't remember that.

Q. I hand you the question and answer on page 223 of the official transcript of that hearing and ask you if you made that answer to the question: "What was the tenor or what was said above where the persons were signed?" Answer: "Different people wrote these up and since different people wrote them up, they were worded differently, but the general trend was worded like that—if the company will reopen the gates to the people, we will cross the picket line and return to work."

Mr. Wilkinson: We object; it's not shown that the petition was ever delivered to the company or that he participated in the drafting of the petition, or connected, except its possible delivery to Mr. Harris.

Court: Overruled.

Mr. Wilkinson: We except.

Q. You take the record and see if you made that answer on that occasion.

A. That is right with respect to those previous that I knew nothing about; that I didn't write myself.

Q. Those petitions were brought to you, were they not?

A. That's right.

Q. And what did you do with them when they were brought to you?

A. I gathered those up as they were brought to me and gave them to Mr. Harris.

Q. What did Mr. Harris tell you about whether or not you could use them?

A. He didn't think they were very good. That is why we made the other petition.

Q. You reworded—Mr. Harris reworded the petition. Is that correct?

A. That's right.

Q. In connection with this petition asking the company to reopen the plant, did you spend approximately five

weeks during the strike of your own time and in your own automobile out getting people to sign this petition to the company?

A. No, I didn't spend five weeks' time. Five weeks time [fol. 113] elapsed during the time—in other words, about the middle of the strike, I started working on this and spent some part of each day working on it.

Q. You worked on it some each day?

A. Some part of each day.

Q. And the people brought the petitions to you, did they not? Were you the man who contacted Mr. Harris?

A. That's right.

Q. Did you have any assurance as to whether or not the plant would reopen after they got your petition?

A. We had no assurance whatsoever.

Q. What did Mr. Harris tell you about whether or not he thought the plant would or would not?

A. He had no assurance whatever that the petition would do any good at all. The only thing we could do was sign and to show our willingness and desire to work, and whatever action was taken on it would depend on what attitude was taken by the company.

Q. What attitude was taken by the company on whether or not they would reopen?

A. That's right.

Q. During this period of time, your activities were directed to getting the petition into the hands of the company asking the company to reopen. Is that true?

A. Yes, on getting signatures on the petition and into the hands of Mr. Harris.

Q. Mr. Russell, you knew that the plant was closed, did you not?

Mr. Wilkinson: We object to that; assumes the fact that the witness knows; calls for a conclusion; invades the province of the jury.

Court: Overruled.

Mr. Wilkinson: We except.

A. I had not been notified by any official of the plant that the plant was closed or there was no work.

Q. I asked you, you knew the plant was closed, didn't you?

Mr. Wilkinson: Same objection.

Court: Same ruling.

Mr. Wilkinson: There's no evidence that the plant was closed; assumes a fact of which there is no evidence.

A. Since I was unable to get into the plant, I didn't know [fol. 114] whether it *it* was closed or not.

Q. I will ask you if you didn't spend five weeks getting that petition signed, going to people and just begging them to sign that petition for you—

Mr. Wilkinson: We object to that; invades the province of the court; argumentative.

Court: It is argumentative.

Q. You mean to say that you spent five weeks asking the plant to reopen when you didn't know whether it was closed or not?

Mr. Wilkinson: Object on the same grounds.

Court: Overruled.

Mr. Wilkinson: Reserve an exception.

A. My hopes was that some steps would be taken insuring our safety to get into the plant.

Q. If you were interested in safety in getting into the plant, did you come to the Sheriff's office and ask for police protection to cross the line on the 18th day of July? Yes or no?

A. No answer.

Q. Did you come to the Sheriff's office and ask for police protection to get across the picket line?

A. I did not.

Q. Did you go to any other law enforcement office or agency?

A. I did not personally.

Q. Did you go to your lawyer and ask him to get a court injunction against any violence on the picket line?

A. I did not.

Q. Did you take any action whatsoever against the action

you allege here, the violence and coercion, for your protection?

A. I felt—

Q. Did you or not?

A. I did not.

Q. But you do admit that you immediately began activity and worked for some five weeks in connection with this petition to the company?

A. Some part of the five weeks, yes.

Q. And during that five weeks, did you have run an advertisement in The Decatur Daily advertising that if any employees were interested in going back to work they should meet at the Court House?

A. That's right.

[fol. 115] Q. At that meeting at the Court House, did you not preside? You were at the meeting, were you not?

A. I was.

Q. You presided, did you not?

A. Together with several others, yes.

Q. You addressed the meeting, talked to them?

A. I did.

Q. And the subject was concerning the getting of the plant to reopen, was it not?

A. The question at hand was whether—in other words, what hopes we had of returning to work, whether we would have protection to get back in; what steps had been taken toward getting protection; what attitude the company would take. Those things we didn't know.

Q. Mr. Harris came down to that meeting, did he not?

A. He did.

Q. And he made a talk, too, did he not?

A. He did.

Q. And in his talk he said, did he not, that in his opinion you would have to get enough people willing to go back who could operate the plant before the company would consider reopening?

A. that is about right.

Q. And when you went to Harris' office and talked to him about the petition, isn't it true you and he discussed the possibility of whether or not the company would reopen?

A. More of our discussion was on the matter of being able to get into the plant.

Q. Is it not true that you asked Mr. Harris whether or not he thought the company would reopen and that he told you if you got enough signers on the petition they would probably reopen?

A. I believe that is right.

Q. Is it not true that you told Mr. Harris, you gave him your opinion as to how many people it would take to operate the plant?

A. That's right.

Q. You remember how many you told him you thought it would take to operate?

A. I think I must have said from two hundred to two hundred fifty.

Q. And when you went about the country getting people to sign the petition, did you not tell them you were going to have to have two hundred and fifty signatures or there-[fol. 116] abouts in order to get the company to reopen?

A. No. I didn't tell them that. I told them that it would take as many as we possibly could get.

Q. Did any of these people you went to—did they ask you whether or not the plant would reopen?

A. Yes, they asked that.

Q. What did you tell them?

A. That was something we couldn't know for sure. The only thing we could do was get as many people to sign as we possibly could and submit that.

Mr. Powell: May it please the court, we had a subpoena duces tecum for Mr. Oakes to bring certain records, and he is outside the court room at this time, and we need him at this time.

Mr. Adair: We have subpoenaed some documents that we wish to question the plaintiff about. They are in the possession of Mr. Oakes of the company, and he was here before lunch and I told him to be back at one o'clock. Counsel for the plaintiff insist we put Mr. Oakes on and identify the documents before using them and consented we could do so now, and that we could continue the cross examination as soon as we finish with him.

FRANK W. OAKES, being called by the defendants, being first duly sworn, testified as follows:

Direct examination.

Mr. Adair: We would like to state that we have called this witness with a subpoena duces tecum for the limited purpose of identifying certain documents that we wish to introduce in evidence and question other witnesses on.

Mr. Wilkinson: We don't concede any right to limit any purpose for which the witness is called.

Court: We have a statute in this State that says on cross examination it may be thorough and sifting. I don't know exactly what sifting might mean, but I guess it might be particular. I think they can ask any question on cross examination that is legitimate.

Mr. Adair: That is connected with the case?

Court: Yes, sir.

Mr. Adair: Your Honor, in view of the ruling of the [fol. 117] court, this man we regard as a hostile witness.

Mr. Harris: We object to that in the presence of the jury.

Court: Gentlemen of the jury, any statement being made by counsel is not evidence. You won't regard that.

Mr. Adair: We propose not to use this witness at this time for this purpose in view of your ruling. We would like to continue with the cross examination of Mr. Russell.

PAUL RUSSELL, being recalled to the stand:

Q. Mr. Russell, you do know that the petition that was addressed to the company that they reopen the plant—do you know whether or not that was delivered to the company?

A. I do not know for sure. I delivered the petition to Mr. Harris.

Q. You know what day you delivered it to Mr. Harris?

A. It was on Friday afternoon, the week before the 22nd.

Q. 22nd of what?

A. Of August.

Q. Was the 22nd of August the day the plant reopened?

A. Yes.

Q. Was it immediately after you had delivered the petition to Mr. Harris and asked him to send it to the company?

A. The following week.

Q. And you tell us that you don't know whether or not, you have no knowledge whether or not that petition was delivered to the company?

A. I presumed that the petition was delivered to the company.

Mr. Wilkinson: We move to exclude the statement that he presumed it was delivered; incompetent, illegal; calls for a mental operation of the witness. If he knows anything, we don't object.

Court: Sustained.

Q. Mr. Russell, you say you presumed the company got the petition. You know that shortly thereafter, they announced they were going to reopen?

A. I do.

Q. You know also that you talked to your attorney, Mr. Harris, after you carried him the petition?

A. I did.

Q. Did Mr. Harris tell you he wrote a letter to the company along with the petition?

[fol. 118] Mr. Wilkinson: We object; that calls for a privileged communication.

Court: Sustained.

Mr. Adair: This letter that Mr. Harris wrote was addressed to the company and had to do with the petition to reopen, and I don't believe that comes—

Court: Any information between him and his attorney is privileged.

Q. Did you talk to Mr. Harris after you had delivered the petition to him for delivery to the company and before the company reopened?

Mr. Wilkinson: We object, if the Court please; confidential.

Court: Overruled.

Mr. Wilkinson: We except.

A. I don't remember whether I had a conversation with Harris between those two dates or not.

Q. As a matter of fact, you know that the petition got in the hands of the company, don't you?

Mr. Wilkinson: We object; argumentative; incompetent, illegal, immaterial; inter alios acta.

Court: It is a little awkward. Overruled.

Mr. Wilkinson: Except:

Q. You know that they got the petition, don't you?

Mr. Wilkinson: Same objection.

Court: Overruled.

Mr. Wilkinson. We except.

A. Yes.

Q. You testify "yes". A few moments ago, you said you didn't know, I believe?

Mr. Wilkinson: We object to the comments as to what he testified.

Court: Don't pay any attention to that statement, gentlemen.

Q. In your testimony yesterday on direct examination, you testified, if I understood correctly, that you came down to the intersection of Grant Street and Railroad Avenue, and that you traveled east on Railroad Avenue toward the entrance to the plant, and that almost $\frac{1}{4}$ mile from the entrance, about the intersection of Grant, that you saw the defendant, Ralph Webster. Is that correct?

A. That's right.

Q. And that Ralph Webster told you that you could not [fol. 119] get in the plant?

A. That's right.

Q. And your reply to him was "Go to hell".

A. That's right.

Q. Do you recall Mr. Webster telling you that the Mayor and Chief of Police had been out a few minutes before and asked him to station himself at the intersection of Grant and to tell the employees that?

A. I do not.

Q. You testified you proceeded up on the street toward the plant traveling east? And that about even with the Alabama Flour Mill, the defendant, Howard Hovis—you know Howard Hovis, do you not?

A. Yes.

Q. (Indicating) This is Howard Hovis?

A. That is.

Q. You testified that he signalled you to stop yesterday. You testified further that you ignored the signal of Howard Hovis when he asked you to pull over.

Mr. Harris: We object to counsel telling the witness what he testified and framing his question in that manner. That is a question for the jury.

Q. I will change the manner. Did you testify that when Howard Hovis gave you a signal to pull over, you kept going?

A. I did.

Q. That was yesterday, was it, that you were testifying?

A. Yes.

Q. Mr. Witness, you recall testifying in a hearing under oath before the National Labor Relations Board, a hearing at the Post Office in Decatur on May 12, 1953?

A. I did.

Q. Do you recall testifying about this same transaction that you here testified to?

A. I do.

Q. Mr. Witness, I will point out to you at page 134 of the official transcript of that proceeding, which is the Court Reporter's verbatim record, the questions and answers at the bottom of page 134 and top of 135 and ask if you recall these questions and if you did make these answers: "What happened on July 18, 1951? How did you learn there was a strike?" You answered: "When I came to work and found the picket line."

[fol. 120] A. That is right.

Q. "When you came to work at the picket line, tell just what you did." "I couldn't do anything. I stopped or was stopped."

A. That's right.

Q. "Who stopped you?" "Howard Hovis is one." You recall that?

A. Yes.

Q. Did you keep going when Howard Hovis waved you down, as you testified, or stop?

A. I continued by Howard Hovis at that point. Howard Hovis came on up nearly to the picket line. I stopped several times between the point where he first waved me down and before I finally came to rest I was bumper to bumper with the picket line.

Q. But your testimony that Howard Hovis stopped you here is inaccurate?

Mr. Wilkinson: We object; the testimony speaks for itself.

Court: I will let him answer whether it is correct or incorrect.

Q. Is that accurate or inaccurate?

A. Repeat the question.

Q. You testified at that hearing that Howard Hovis stopped you. That is inaccurate, is it?

A. No, it is not.

Q. Is your testimony now that you did stop when he waved at you?

Mr. Wilkinson: The witness testified that Howard Hovis dragged there some distance before he came to a stop.

Court: The jury knows what he said.

Q. Let's try to find out what did happen.

Mr. Wilkinson: We object to that statement. That is an insinuation that the witness has not testified to what happened. It is an improper method of examination.

Court: I have told the jury any side remarks of either counsel or off-statements are not evidence and not to be considered by them.

Q. Mr. Russell, you testified yesterday, did you not, that Mr. Webster waved you down and told you you couldn't get in the plant and you told him to go to hell, did you not?

Mr. Wilkinson: We object; repetition, if your Honor please.

Court: Sustained; he's already said that.

[fol. 121] Mr. Adair: I am trying to get up to the part to where Hovis fits in, if he does.

Q. You testified, did you not, that Hovis waved you down, attempted to, but you kept going?

A. That is right at that point.

Q. When did you stop?

A. From the time I passed Hovis, I was traveling at a very slow rate of speed, say 3 or 4 miles an hour, just easing up through knots of people. Just about 20 feet before I got to the picket line itself, that is where I stopped.

Q. While you were stopped at that point, who came up to your car, if anybody?

A. Hovis came up from behind my car.

Q. He came up after you stopped?

A. He was there when I stopped. I wasn't driving any faster than he could walk.

Q. You say he was there when you stopped?

A. He had his hands on the car when I stopped.

Q. How far was that from where he waved you down? You testified that he was 50 yards down from where the picketing was going on yesterday.

A. Somewhat in that amount of feet, yes.

Q. And you went to within 20 feet of the picket line?

A. I was driving slowly up there, and he was following along behind me and overtook me.

Q. In other words, your testimony is that he was 50 yards away from the picket line; that you ignored him and passed him by in an automobile, and that you got within 20 feet of the picket line and Hovis was there when you got there?

A. I was going 3 or 4 miles an hour, easing up there.

Q. Did you notice him running alongside of your car?

A. He—somebody was sliding on the back of the car. When I stopped Hovis came right to the window.

Q. But he had been 50 yards down the street when you passed him?

A. When I drove by him, yes.

Q. After you stopped within 20 feet of the picket line, did you again put your car in gear and move up forward?

A. Yes.

Q. I will ask you, Mr. Witness, if that wasn't when How-[fol. 122] ard Hovis was drug, when you started from 20 feet to the picket line and moved forward? I will ask you whether or not you moved forward while Howard Hovis was standing at the door of the car talking, and that he had to grab a hold to keep from being run over?

Mr. Wilkinson: We object to that; calls for conclusion of the witness.

Court: That part is objectionable.

Mr. Adair: I will strike that part.

Q. Isn't it true that when Hovis was drug by the car was when you started from within 20 feet into the picket line and moved forward?

A. At that time and before, too.

Q. You know whether or not he had been drug 50 yards before?

A. Just a few feet before the time I stopped.

Q. What part of the car was he being drug by?

A. He had his hands on the rear of the car bumper.

Q. Which bumper?

A. The left hand side.

Q. Did you see him back there?

A. No.

Q. When you stopped up within 20 feet of the picket line, how long was it before you took off again and moved forward?

A. I think maybe two or three, several minutes.

Q. What was your idea of running forward some 20 feet of the picket line? What were you doing moving forward?

A. As an opening would present itself, I would ease through the crowd.

Q. You testified yesterday, did you not, that you were asked the question whether you were an hourly paid employee or a salaried employee when you came up?

A. That's right.

Q. Hovis put his arm on the car and leaned over talking to you. Was he talking to you, trying to persuade you to help the strikers or talking in some other manner?

Mr. Wilkinson: We object; that invades the province of the jury.

Mr. Adair: I withdraw it.

Q. What did he say to you?

A. The only words that Hovis said to me, he came up shaking his fist and hand and said, "Paul Russell, I knew you would be one of the kind of people that would try to cross."

Q. Isn't it a fact that he stood at the door of your car over 10 minutes talking to you about what the strike was all [fol. 123] about and that he told you the plant was closed and he would appreciate it if you would join and become a union member?

A. No.

Q. He didn't do that?

A. No.

Q. You and Hovis frequently talked about the union in your work together in the plant?

A. That's right.

Q. You were both maintenance electricians in the same department?

A. That's right.

Q. You knew each other well, did you not?

A. That's right.

Q. Mr. Russell, I hand you plaintiff Exhibit "2" which purports to be a photograph I believe you identified yesterday, which shows Railroad Avenue running from west to east, does it not?

A. Yes.

Q. The west side of the avenue being to your left looking at the picture.

A. This avenue runs more or less east and west.

Q. The western end is to your left?

A. Yes.

Q. And the entrance to the plant and the eastern end of the avenue is to your right, looking at the picture?

A. That's right.

Q. This avenue, Railroad Avenue, terminates at the plant gate, does it not?

A. That's right.

Q. That's as far as it goes?

A. That's right.

Q. Do you know whether or not where the railroad track

crosses Railroad Avenue as seen in this picture, do you know where the company property line is with relation to that railroad?

A. I think that railroad is the property line.

Q. I would like to ask you, Mr. Witness, to mark an "x" at the railroad that is the property line, so when we hand the picture to the jury they can tell what you are talking about.

Mr. Wilkinson: Isn't the sign in the picture the company line?

Mr. Adair: I'd just as soon the witness do the testifying.
[fol. 124] Court: He was just identifying whether or not it was.

Mr. Adair: No, sir, it isn't and I intend to develop that. The property line is different to the location of the sign.

A. (Witness marks).

Q. You have placed "x x" where the railroad crosses Railroad Avenue and showing the company property line. Can you tell me where the pickets were circling with respect to that railroad track on the morning of the 18th when you drove up against the picket line? Can you show me where they were circling?

A. I believe they were just on the west side of that railroad track.

Q. Do you deny they were on the east side and coming up on to the railroad track circling?

A. I don't deny that. The exact spot would be only about 20 feet different. I don't know what side they were on.

Q. It could have been just west or east of the track, either one, is that correct?

A. That's right.

Q. Did you testify that east of the tracks is company property?

A. Somewhere in that vicinity is company property.

Q. You see these three shrubs out by that sign? (Indicating picture).

A. Yes.

Q. They are company shrubs, are they not?

A. I suppose so.

Q. They on company property?

A. I suppose so.

Q. I would like to hand the photograph to the jury so they can see where the company property line is as marked by this witness.

Mr. Russell, on plaintiff's Exhibits "4", "5" and "6" which are photographs allegedly showing the picket line on the morning of August 22nd when the plant reopened you have identified certain people either in the picket line or in the crowd nearby. Now on Exhibit "5" you identify one person yesterday, Ellis Lane. Where is Ellis Lane?

A. (Indicating) With that cap on.

Q. Do you know whether or not Ellis Lane was a union member?

A. Not for sure, no.

Q. Did he go back to work when the plant reopened?

A. On the third day he did.

Q. He didn't stay out with the strikers?

[fol. 125] A. Not after the third day.

Q. Mark Mr. Lane with an "x"—the one you say you don't know whether he is associated with the defendants or not.

A. (Witness marks).

Q. And none of these defendants you filed this law suit against are in that picture, are they?

A. I don't see them; no.

Q. On this picture which is identified and introduced as plaintiff's Exhibit "6", you said you identified one man, M. Peck. Will you show us where he is?

A. (Witness marks):

Q. Is Peck a defendant in this case?

A. No.

Q. You know whether or not he is working in the plant now?

A. He isn't working in the plant.

Q. That is the only one you know on that picture?

Court: He said Arnett was also in that.

Mr. Adair: No, sir; this is "6" I am referring to.

Q. On plaintiff's Exhibit "4", you identified one person as Mr. M. D. Palmer. Will you mark with a fountain pen where Mr. Palmer is?

A. (Witness marks) That was "N. D."

Q. Mr. Palmer that you marked is the driver of the car going into the plant, is he not?

A. That's right.

Q. He was not a striker, was he? Do you know?

A. No.

Q. He went back in when they reopened?

A. That's right.

Q. He the only man you know in that picture?

A. The only man I know and can give the name to go with it.

Q. Of all those pictures that have been introduced, do any of these defendants here, are they shown as being in the picture or about it?

A. No.

Q. Mr. Russell, when you got back in the plant the first day it reopened, August 22nd, you continued to work without interruption up to the present time?

A. That's right.

Q. You are still working there?

A. I am.

[fol. 126] Q. Mr. Russell, when you got back in the plant when it reopened, you organized some kind of club in there, did you not?

A. That's right.

Q. What was the name of that club?

A. Industrial Employees Club.

Q. Where did you get the By-laws for that club?

A. Several friends and myself formed those and adapted them from other organizations.

Q. Is it not true that you copied primarily the Chamber of Commerce By-laws?

Mr. Wilkinson: We object; immaterial, irrelevant, incompetent; inter alios acta.

Court: I will let him answer.

Mr. Wilkinson: Except.

A. Yes, the basic frame work of the Women's Chamber of Commerce By-laws.

Q. You a member of the Decatur Chamber of Commerce?

A. My wife is a member of the Women's.

Q. You a member of the Decatur Chamber of Commerce?

A. I am.

Q. Were you at that time?

A. No.

Q. You were not a member at the time you organized this club?

A. No.

Q. Is it not true that the principle of this club was to keep unions out of the plant?

Mr. Wilkinson: We object as being a conclusion of the witness; invades the province of the jury; incompetent, illegal.

Mr. Adair: It goes to his interest.

Court: That would be a conclusion. Sustained.

Q. What was provided in so far as requirements of membership in the club?

Mr. Wilkinson: The by-laws are the best evidence.

Court: If he knows, I will let him answer.

A. As I remember, the only requirement for being in the club was being employed in an industry in and around the Decatur area.

Q. This club was formed to promote individual bargaining with the employer, was it not?

[fol. 127] Mr. Wilkinson: By-laws and Constitution are the best evidence; calls for a conclusion of the witness; invades the province of the jury.

Court: Overruled.

Mr. Wilkinson: We except.

A. That was one of the objectives, yes.

Q. You didn't want to have any more strikes, did you?

A. That's right.

Q. You thought this club, did you, was a good way of preventing unions from getting in the plant?

Mr. Wilkinson: We object to what he thought; calls for mental operation of the witness.

Court: Sustained.

Q. What was your purpose?

Mr. Wilkinson: Same objection. Calls for the disclosure of a mental operation on the part of the witness.

Court: Overruled.

Mr. Wilkinson: We except.

A. That wasn't the idea of the club because it didn't limit membership to this plant.

Q. Didn't you state, or have you stated previously that the primary purpose of the club was to oppose collective bargaining?

Mr. Wilkinson: We object. He's attempting to contradict the witness; illegal, incompetent.

Court: Overruled; cross examination.

Mr. Wilkinson: We except.

A. I don't remember any answer to a previous question about that.

Q. To refresh your recollection, I will hand you a copy of what purports to be an official transcript of the hearing held on May 12, 1953 in which you testified where you stated that the club was for members interested in making their own conditions of work and affairs with their employer as individuals?

A. That's right.

Q. And the following question was asked: "In other words, carrying on the employer—employee functions without the intervention of any union. Is that what you are saying?" (A) "Without the intervention of any unions."

Q. You so testified?

A. That's right.

[fol. 128] Q. Is it true that after you got that club organized that you distributed through the mails literature attacking unions, to the employees of Wolverine?

Mr. Wilkinson: You mean this particular union?

Mr. Adair: They attacked them all; this one in particular.

Mr. Wilkinson: I've never seen the literature you refer to.

Q. Did you get out such literature?

A. I don't believe that we could consider it as attacking all unions or unions in general.

Q. Where did you get that literature you sent out?

A. The club had a committee that selected the literature that was used for mailing out.

Q. I didn't ask you about any committee. I asked where you got the literature?

A. I didn't secure the literature. I can't say where they got that literature.

Q. That is what I am asking: Where it came from?

Mr. Wilkinson: He says he can't say.

Q. I will ask you if you didn't testify previously you know where the literature came from; and that you discussed the literature and obtained it from the Manager and Secretary of the Decatur Chamber of Commerce. You recall that?

A. It depends on which literature you are speaking about. In other words, you would have to speak about a particular letter.

Q. You know what literature I am talking about. I am talking about the literature put out by your club organization when you got back to work.

Mr. Wilkinson: We object to arguing with the witness.

Court: Don't argue.

Q. I will ask you, Mr. Witness, if in your sworn testimony on May 12, 1953 before the United States Government, National Labor Relations Board, if the following questions were asked and the following answers made:

"Q. Do you know whether or not Wolverine Tube Company furnished that information that they compiled?"

"A. They did not."

A. That's right.

"Q. Do you know where it did come from?"

"A. Yes."

A. That's right.

[fol. 129]. Mr. Wilkinson: Read the context to see what the witness is talking about.

Mr. Adair: We are talking about the same thing.

Q. "Where did it come from?" Remember that?

A. That's what it says there. Yes.

Q. You don't deny that?

A. I don't.

Q. Your answer: "Spotlight Publications." That true?

A. That's right.

Q. You do recall that?

A. That particular question, yes.

Q. "Who is that put out by?"

A. "I can't recall the company. You have it. Spotlight Publications, it shows."

Q. "This is one?"

A. "That's right."

Q. "How did you happen to be on their publication list?"

A. "I received these through the Chamber of Commerce."

Q. Is that your answer?

A. Yes, sir.

Q. Is that correct?

A. That's what it says.

Q. "Did you discuss it with any of those parties at the County Club or Chamber of Commerce at the time you arranged for them to be distributed?"

A. "I believe—I think I discussed it with the Manager and Secretary of the Chamber of Commerce."

Q. Did you so answer?

A. That concerned the Spotlight Publication.

Q. "The purpose, as I understand, of that publication is, as you have stated, to promote individual as opposed to collective bargaining in the plant. Is that right?"

A. "Yes."

Q. You don't deny you said "yes"?

A. I do not.

Q. So after you went back to the plant, you were still busy with the club to fight unions.

A. That's right.

Q. Did you get a 20¢ increase in wages after you went [fol. 130] back in the plant?

Mr. Wilkinson: We object; immaterial and irrelevant.

Mr. Adair: That has been brought out.

Court: Not after he went back, I understand.

Mr. Adair: I withdraw it.

Q. You know Mr. Kromer, do you not?

A. I do.

Q. You know Mr. Don Blend?

A. I do.

Q. Who is Mr. Kromer?

A. He is now Plant Manager at Wolverine.

Q. Who is Mr. Blend?

A. He was the Plant Manager at Wolverine in Decatur.

Q. You know Mr. Schelbe?

A. I do.

Q. What is he?

A. He is Purchasing Agent at Wolverine now.

Q. You know Mr. Overstreet?

A. I do.

Q. What is he?

A. He is the Sales Manager at the present time.

Q. They are all officials of the company, are they not?

A. That's right.

Q. You belong to the Decatur Country Club?

Mr. Wilkinson: We object. That's got nothing to do with the case.

Court: I can't see now, but I will let it in.

A. I do.

Q. Is it not true that you are the only hourly paid employee of the Wolverine Tube Company that belongs to the Decatur Country Club?

Mr. Harris: We object.

Court: Let him answer.

A. I belong. I don't know whether any other hourly paid employees belong or not.

Q. Did you testify ten days ago you were the only employee so far as you know?

A. So far as I know.

Q. You haven't seen any other hourly men, supposedly making \$1.75 an hour, that belongs to the Country Club?

[fol. 131] Mr. Harris: Same objection.

Court: Overruled.

A. I see them out. I don't know whether they are members or not.

Q. Have you ever seen the management of the plant out there: Mr. Blend, Mr. Kromer, Mr. Schelbe, Mr. Over-

street? Have you socialized with them at the Decatur Country Club on occasions?

Mr. Harris: Same objection; illegal, immaterial.
Court: Overruled.

Mr. Harris: We except.

A. Like at any gathering, you speak to any person you might know.

Q. Did you ever have dinner with them and some drinks and socialize with them in any way?

Mr. Wilkinson: Same objection.

Mr. Adair: This question is asked for the purpose of impeachment.

Court: I am opening the doors on both sides.

Q. I will repeat the question: Did you ever have dinner with them or drinks with them or socialize with the top officials or management at the Country Club?

A. Not in any particular party. We might have been there at the same time. I could not say to that.

Q. I will ask you if on May 12, 1953 at the hearing before the U. S. Government, whether or not the same question was asked you on page 133, and you answered: "I probably have occasionally." Is that your answer?

Mr. Wilkinson: I understood the question was whether he was doing it now.

Mr. Adair: You misunderstood the question.

Mr. Wilkinson: I stand corrected.

Q. Did you, on that occasion, answer: "I probably have"?

A. I don't deny answering that question.

Q. Were you telling the truth then?

Mr. Wilkinson: We object to that.

Court: Sustained.

Q. In connection with your Country Club and Chamber of Commerce, what are the initiation fees for the Country Club?

Mr. Wilkinson: We object.

Q. How much is it?

Court: What is the purpose of that?

[fol. 132] Mr. Adair: This is testing his credibility, and particularly, he testified on direct examination as to how much money he was making at the time of the strike; the amount of his wages are material, and I want to show that he isn't credible, in that, he can't expend this kind of money on the wage he makes.

Mr. Wilkinson: It wouldn't make any difference whether they charged him \$1.00 or \$1,000,000.00. I don't know that that affects his credibility. By the same token, I would be willing to go into the amount of the dues the union charges. I don't see that that affects his credibility at all.

Court: Do you expect to connect the question by showing that anybody else furnished the money?

Mr. Adair: I don't have any direct proof to offer.

Court: Objection sustained.

Mr. Adair: We accept.

Q. You still a member, are you not?

A. I am.

Q. You went down to Montgomery last week and testified before the Legislature on labor legislation, did you not?

A. I did.

Q. Did you go down on behalf of the Chamber of Commerce of Decatur?

A. I did not.

Q. Did you go down on behalf of the club you organized in the plant, the Decatur Industrial Employees Club?

A. I did not.

Q. Who did you go down there for?

A. In behalf of myself as a citizen of Alabama.

Q. You took off from work to go?

A. I did.

Q. You pretty bitterly opposed to unions, are you?

A. That's right.

Q. After you got this club organized, is it true that you then petitioned the National Labor Relations Board in your name for an election to vote the union out of the plant?

A. That's right.

Q. You took the lead in that, did you?

A. That's right.

Q. The petition was filed in your name?

[fol. 133] A. That's right.

Q. And this hearing I have been talking about, this sworn testimony was taken as a result of the hearing held in connection with your petition that you filed to vote the union out. Is that not right?

A. That's right.

Q. How many hearings have you had on this petition to vote the union out?

A. I believe three.

Q. You testified in each one?

A. I did.

Q. Who is your lawyer in that case?

A. Mr. Harris.

Q. After you got the employees' club organized and after you went to the government to get the election to try and vote the union out, did you then file this law suit we are trying today against these defendants?

Mr. Wilkinson: We object; calls for a mental operation and conclusion of the witness.

Q. Did you file it?

A. I did.

Q. Is it not true that you personally went to various employees of Wolverine Company and asked them to also file law suits against these defendants?

A. I told the various people that I was filing a suit and if they were interested to get in touch with Mr. Harris.

Q. Who did you go to?

A. Various employees in the plant who were interested.

Q. Who were they?

A. Cloyce Frost, Kirby, Pirkle, Putnam, Dan McCoy, Coice Woodard. That is about all I remember at the time.

Q. How many did you try to get to file suits?

A. I didn't try to get any one to file suit. I explained what I was doing and told them to contact Mr. Harris if they were interested in doing the same thing.

Q. I direct your attention to your sworn testimony on May 12, 1953 and the official transcript at page 207 where you were asked: "Did you have any certain number you were trying to get to file a law suit?" (A) "As many as possible." Did you so answer?

A. I did.

[fol. 134] Q. You were pretty bitter towards these boys and the union?

Mr. Wilkinson: We object; he's already been over that.

Court: He has answered that.

Q. As a matter of fact, there are 30 suits filed just like the one we are trying before this jury; same suit identical word for word. Is it not true that you contacted James W. Thompson?

A. I don't remember.

Q. You don't say you didn't?

A. No.

Q. You remember talking to Burl McLemore?

A. I don't remember.

Q. You know Burl McLemore?

A. Yes.

Q. You called him for a witness in this case?

A. Yes.

Q. You don't know whether you talked to him or not about filing any law suit?

A. No, I don't know whether I did or not.

Q. Do you know that he has filed an identical law suit to yours?

A. I do know it.

Q. How about Loyd E. McAbee? You talk to him?

A. Yes.

Q. Did he agree to file suit?

A. He filed a suit.

Q. Did you tell these folks they would have to pay you a commission off of what they collected?

A. I did not.

Q. Have you got any arrangements for you to get part of what they recover if they get anything?

A. I have not.

Q. You talk to N. A. Palmer?

A. I did.

Q. Did he agree to file suit?

A. He did.

Q. Tommy F. Breeding. Did you talk to him?

A. I don't remember.

Q. You know Tommy F. Breeding?

A. I do.

[fol. 135] Q. As a matter of fact, all the names so far were members of your club you formed, the Decatur Industrial Employees Club, were they not?

A. I don't know that.

Q. You don't deny they were?

A. No.

Q. How about Tommy F. Breeding? Was he a member of the club?

A. I believe so.

Q. Was he active in the back to work movement to get the company to reopen?

A. I don't remember any part that he took in that.

Q. Is it not true that he took a petition from house to house to get employees to ask the company to reopen like you did?

A. He may have.

Q. Is it not true you talked to him and encouraged him to file this law suit?

A. I don't remember whether I talked to him in particular or not.

Q. You don't deny it?

A. No.

Q. David G. Puckett. Did you also encourage him to file a law suit?

A. I don't remember.

Q. You may have?

A. I may have.

Mr. Wilkinson: We object to what he may have done.

Court: Sustained.

Q. Comer T. Junkins. You know him?

A. I do.

Q. Did you talk to him about filing a law suit?

A. I don't remember.

Q. You know that Comer T. Junkins was one of your group that carried a petition around asking the company to reopen?

A. I don't remember.

Q. You know that he was employed out there and a member of your Decatur Industrial Employees Club, don't you?

A. I don't remember that at the present.

Q. Mr. Joseph E. Richardson. You remember talking to him about filing a law suit?

A. I don't remember.

Q. You deny you talked to him?

A. I don't deny it.

[fol. 136] Q. Coice E. Woodard. Did you talk to him about filing a law suit?

A. Yes, I believe he is one I talked to.

Q. Did he agree to file suit?

A. He went to talk to Harris about it. In fact, several of these people who had heard about the law suit met in groups to talk to Mr. Harris about it.

Q. Where did they hear it?

A. Just by word of mouth being passed.

Q. By your word and by your mouth?

A. By mine and others.

Q. Millard E. Green. Did you talk to him about filing a law suit?

A. I don't remember.

Q. You don't deny it?

A. No.

Q. James C. Hughes. Did you talk to him about filing a law suit?

A. I don't remember.

Q. You don't deny it?

A. No.

Q. James C. Dillehay. Did you talk to him about filing a law suit?

A. I don't remember.

Q. You don't deny it?

A. No.

Q. James T. Kirby. Did you talk to him about filing a law suit against these boys?

A. I talked with him about it.

Q. Did he agree to file it?

A. He talked to Mr. Harris about it.

Q. You know he did file one?

A. He did file one.

Q. Cloyce Frost. Did you talk to him about filing a law suit?

A. I did.

Q. Did he agree to file?

A. He talked to Mr. Harris about it.

Q. Did he file it?

A. Yes.

Q. You sent him to Harris?

A. That's right.

Q. These others you say that talked to Harris. You send them to Harris?

[fol. 137] A. Not directly. The word was passed around that Harris would talk to them about it. Some talked to Harris.

Q. In other words, all these parties you solicited, you sent to talk to Harris?

A. I did or friends of mine did.

Q. You said in your sworn testimony you were trying to get as many as possible. That was what you were trying to do?

A. That's right.

Q. E. L. Thompson, Jr. Did you talk to him about filing a law suit?

A. That's right.

Q. You sent him to Mr. Harris?

A. Yes.

Q. A. A. Glasscock, Jr. Did you talk to him about filing a law suit?

A. I don't remember.

Q. You remember sending him to Harris?

A. I don't remember.

Q. Do you deny it?

A. No.

Q. Hoyt E. Penn. Do you deny you talked to him?

A. No.

Q. Do you remember talking to him?

A. No.

Q. Spencer Weinman? Do you remember talking to him?

A. I don't remember.

Q. Joseph H. Hightower. Do you remember talking to him about filing a law suit?

A. I don't remember.

Q. Do you deny it?

A. I don't.

Q. A. A. Kilpatrick. Did you talk to him about filing a law suit for damages against these boys and their organization?

A. I did.

Q. Did you send him to Harris?

A. That's right.

Q. To get a suit drawn up?

A. That's right.

Q. Charles E. Kurt. Did you talk to him about filing a law suit?

A. I don't remember.

[fol. 138] Q. You remember sending him to Harris to get Harris to file a law suit?

A. I don't remember.

Q. Do you deny doing that?

A. I don't deny it.

Q. Richard W. Penn. Did you talk to him about filing a law suit?

A. I don't remember.

Q. Do you deny it?

A. No, I don't.

Q. Robert C. Russell any kin to you?

A. Brother.

Q. Did you talk to him about filing a law suit?

A. I did.

Q. Did you talk him into filing a law suit?

A. I asked him to talk to Harris and see if he thought he wanted to.

Q. You sent him to Harris?

A. I did.

Q. He did file a suit?

A. He did.

Q. L. N. Abercrombie. Did you talk to him about filing a law suit?

A. I don't remember.

Q. Do you deny it?

A. I don't.

Q. James H. Tanner. Did you talk to him about filing a law suit against these boys?

A. I don't remember.

Q. Do you deny it?

A. No.

Q. Charles Carroll. Did you talk to him about filing a law suit?

A. I don't remember.

Q. Do you deny it?

A. I don't.

Q. Ordell L. Garvey. Did you talk to him about filing a law suit?

A. I don't remember.

Q. Do you deny it?

A. I don't.

Q. A. R. Barron. Did you talk to him about filing a law suit?

A. I don't remember.

Q. Do you deny it?

[fol. 139] A. I don't.

Q. Robert L. Woodard. Did you talk to him about filing a law suit?

A. I don't remember.

Q. Do you deny it?

A. I don't.

Q. You did talk to a great many people about filing suits. Is that the reason you can't remember?

A. That's right.

Q. You know all the people whose names I read?

A. Yes, I know most of them.

Q. It is true, actually most of these people were engaged, along with you, in the back to work movement?

A. No, I would not say that is true. Only a very few of them were.

Q. They all went back to work on the 22nd?

A. That's right.

Q. Mr. Russell, your car didn't suffer any damage on the morning of the 18th, did it? You didn't have to have it repaired?

A. No.

Q. You were not hurt in any way physically?

A. No.

Q. No personal injury?

A. No.

Q. Anybody touch you, your body, or your person?

A. No injuries, no.

Q. In other words, they didn't touch you. Is that what you said?

A. That's right.

Q. As a matter of fact, you sat through two hours and during that whole time nobody touched you. Is that true?

Mr. Wilkinson: We object; argumentative, repetitious, illegal, immaterial.

Court: It is repetition.

Q. Did you sit there for two hours?

Mr. Wilkinson: Same objection.

Court: I think he testified that on direct examination, but I don't believe he has on cross examination.

Mr. Wilkinson: Reserve an exception.

A. I did.

Q. Mr. Russell, I hand you a photograph, which is in evidence [fol. 140] as plaintiff's Exhibit "1", and holding that photograph in front of you and looking down Railroad Avenue, you would be looking west away from the plant, is that not true?

A. That's right.

Q. When you first came around the corner down there and the defendant, Ralph Webster, told you you could not get in the plant, you said that was about $\frac{1}{4}$ mile away from the plant entrance.

A. I think that is about right.

Q. Is it not true there were a great number of cars parked out through this area on both sides down to where Webster talked to you?

A. Along-side of the street, yes.

Q. And there was a multitude of people out there, were there not?

A. That's right.

Q. Do you know whether or not there were a great many townspeople there on that morning who didn't work in the plant?

A. I do not know.

Q. Did you not see on that morning a great number of women, ladies and children?

A. Yes.

Q. They didn't work in the plant, did they?

A. No.

Q. Is it not true that you saw on that morning officials of the City of Decatur?

A. I don't remember seeing any officials of the City.

Q. Did you see any of the officials and employees of the Goodyear Mills, which is right there by the railroad track?

A. I didn't recognize any of them.

Q. You don't know what percentage of that multitude of people was made up of Wolverine employees, do you?

A. No, I don't know the exact percentage.

Q. And when you say that while you were sitting there, you heard some voices from back in the throng or in the multitude, you heard voices saying, "Turn him over"—do you know whose voice that was?

A. I do not.

Q. Was it a woman or a man?

A. It was a man's voice.

Q. Do you know whether that man was a spectator out there or whether he was a striker?

[fol. 141] A. I do not know.

Q. Or do you know whether he was a non-striker?

A. I do not know.

Q. Did anybody turn you over?

A. No.

Q. And you don't know who said that?

A. No.

Q. You know whether it was Hovis that said it?

A. No.

Q. You know it wasn't Hovis that said it, don't you?

A. No, I don't know that.

Q. Wasn't he standing right there talking to you?

A. I don't believe just at that time.

Q. You know it wasn't Webster that said, because he was a quarter of a mile down the road.

Mr. Wilkinson: We object.

Mr. Adair: That's what the witness testified to.

Court: If you will leave off "because", I will overrule it.

Q. You know Webster wasn't the one that said it?

A. I don't believe it was.

Q. You know Felton Dyer sitting in the middle?

A. Yes.

Q. Was it him that said it?

A. I don't know.

Q. You don't claim it was?

A. No.

Q. Of the three defendants sitting here, Hovis, Webster and Dyer, did any one of those three men lay a hand on you?

A. No.

Q. It would be your best judgment, as a matter of fact, that none of these defendants uttered that cry?

Mr. Wilkinson: We object; repetitious.

Court: Let him answer.

A. That's right.

Q. Mr. Russell, to go back just a minute: You got the various petitions together or the petition signed by employees directed to the plant asking that they reopen, and carried it to Harris, you so testified, did you not?

A. That's right.

[fol. 142] Q. Isn't it true that the same wording appeared on each sheet of that petition?

Mr. Wilkinson: We object. The petition itself is the best evidence.

Q. If you know?

Mr. Lynne (Court): Is the petition available?

Mr. Adair: The petition is in the hands of the company officials.

Court: Let him answer.

Mr. Wilkinson: We except.

Q. Was the wording the same?

Mr. Wilkinson: We object. It doesn't call for the best evidence and the proper predicate has not been laid.

Court: Overruled.

Mr. Wilkinson: We except.

A. On the typewritten petition, the wording was the same, I believe.

Q. Did that petition, to your knowledge, read as follows: "The undersigned—

Mr. Wilkinson: We object to reading that in the presence of the jury unless the witness can identify the document.

Court: Let him read it and then ask whether it is or not.

Q. Did you read the wording, according to The Decatur Daily newspaper of August 19, 1951 which was contained in the petition?

A. I did.

Q. Is that what was on the petition, to the best of your own knowledge?

A. As far as I remember, that is it.

Mr. Wilkinson: I would love to have you talk about what petition you are talking about.

A. The ones that were typewritten and prepared for us by Mr. Harris.

Q. That is the one this article refers to; that is the batch of petitions delivered to the company?

Mr. Wilkinson: We object. He's been over that.

Court: He's already answered that.

Q. I thought he raised a question as to which petition it was.

Mr. Adair: You Honor, I would like to read this to the jury.

Mr. Wilkinson: We object; incompetent, illegal, immaterial.

Q. (Reading) "The undersigned who were employed by you at the time of the work stoppage caused by the present strike; do hereby request that you reopen your plant for work and we do hereby individually propose to resume [fol. 143] work for you on the same terms and conditions of employment as were in effect at the time of the work stoppage."

Q. Mr. Witness, I will just ask you to straighten this petition out—the first petitions that you carried to Harris, I understand, were prepared in the writing of various employees that wrote them themselves. Is that correct?

A. That must be right. I don't know who wrote them or where they came from.

Q. And they said, in substance, did they not: "If you will open the gate to the plant, we will cross the picket line."

Mr. Wilkinson: We object; calls for conclusion of the witness.

Court: That's repetitious; he's already testified to that.

Mr. Adair: I withdraw it on that basis.

Redirect examination.

By Mr. Wilkinson:

Q. Mr. Russell, in one of Mr. Adair's questions, as I recall you were asked whether or not the Railroad Avenue terminated at the plant gate, as I understood, and I understood your reply as "yes". What is the distance between the plant gate and the entrance to the plant property as shown on the picture there you indicated?

A. I believe that would be about 250 or 300 feet.

Q. 250 to 300 feet. Is the interval between the plant gate and the property line company property or is it public property, Railroad Avenue?

A. It is company property.

Q. You wish to amend your statement that Railroad Avenue terminated at the gate or the property line?

Mr. Adair: I object to asking if he wishes to amend his statement.

Court: Maybe the phraseology is wrong, but he can ask the witness if he wishes to correct his statement or give the jury what he now understands to be the exact facts.

Mr. Wilkinson: I will adopt your Honor's phraseology.

Mr. Adair: I also object. He's not entitled to impeach his own witness.

Mr. Wilkinson: I am just clearing up the matter.

Court: If you know now where the line is, state that to the jury.

A. I believe that the—

[fol. 144] Mr. Adair: I object to what he believes.

Court: Don't use "believe". State what is your best judgment.

A. The sign at that point clearly states that—

Mr. Adair: I object to what the sign states.

Court: Sustained.

Q. Just tell your best judgment where it is if you know.

A. I believe that the property—

Mr. Adair: I object; same ground.

Court: Mr. Russell, don't say what you believe. Just state what your best judgment is. If you don't know, say so.

A. The public street ends at or about the railroad track and the private drive of Wolverine begins from there on.

Q. That private drive runs from that point to the plant gate?

A. That's right.

Q. You testified something about a man by the name of Fitzpatrick you talked to about a law suit.

A. I believe the name was Kilpatrick.

Q. Was that the fellow that had his shirt pulled off out there that morning?

Mr. Adair: We object; there's nothing in the record about that.

Mr. Wilkinson: I am trying to identify the man.

Court: Just ask who he was and what happened.

Q. Was the man, Kilpatrick that you referred to, one of the employees at the plant whose shirt was pulled off on the morning of July 18th?

Mr. Adair: I object; that's not in rebuttal, and if there was any such testimony, that should have been put in.

Court: Technically that's correct. The Court is going

to allow everything in this case on both sides to go to the jury. Overruled.

Mr. Adair: We except.

A. Kilpatrick is now working in the plant.

Q. I didn't ask that. I asked you if he was the man who had his shirt pulled off?

A. No, sir.

Q. That was a different man that you talked to about the law suit?

A. That's right.

Q. You referred to a Spotlight Publication in the cross examination by Mr. Adair. What is a Spotlight Publication you referred to?

A. That is a small pamphlet published by the committee [fol. 145] for constitutional government. I believe it is in New York.

Q. Is that the same literature as the other documents you were talking about, your being instrumental in distributing?

A. Some parts of that publication were distributed.

Q. The Spotlight?

A. Yes.

Q. Was any other literature distributed besides Spotlight?

A. There was.

Q. There were two lots of literature or more?

A. Several different lots.

Q. You returned to work, I believe it has been said, on the 22nd of August?

A. That's right.

Q. And what time did you actually enter the plant property that morning?

A. It would have been approximately 10 'til 8.

Q. Approximately 10 'til 8. Did you enter in a car?

A. I did.

Q. Was the car by itself, or was it in a convoy that you spoke of in direct examination?

A. It was in the convoy.

Q. And what place in the convoy was your car; near the end, middle, or rear?

A. I wasn't in my car on that morning. I was riding in a car with several other people.

Q. How far down the line was the car you were riding in?

A. I was about the fourth car in the convoy.

Q. About how many cars were in the convoy?

A. I would say 100 to 125 in my best judgment.

Q. Were the people in the cars workers on the first shift in the plant?

A. They were people that had worked on all shifts before the strike.

Q. Reporting to work on the first shift?

A. That's right.

Q. Mr. Adair asked you whether you ever applied to any law enforcement officers to get you through the picket line. Did you and others employ Mr. Harris to get you back to work out there?

A. We did, yes, sir.

Q. That was part of his job, was it?

[fol. 146] A. Yes, sir.

Q. In several of Adair's questions he asked you if you talked with various people about filing a law suit against these boys, pointing to the three defendants over there. Would you just tell us what you said to the people with whom you discussed a law suit as best you can in substance?

A. In reading the newspaper, I read an account—

Mr. Adair: I object; not responsive to the question.

Court: Just tell what you said to the men.

Q. Just give this jury your best judgment of the substance of what you said to these different people when you discussed the question of a law suit.

A. "I am filing a law suit against the union and certain members for their action on the picket line. Mr. Harris has advised me he thinks I would have a good suit in that respect, and if you are interested in talking to him about it, go see him and make your own arrangements about it."

Q. Did you specify or discuss with them a suit against these three defendants, distinguishing them, against the union or anybody else?

A. I did not.

Q. Mr. Adair asked you about going to Montgomery and giving testimony before the Legislature. That was before a Committee of the Legislature?

A. Yes, sir.

Q. How long ago was that?

A. About a week ago.

Q. I will ask you if following the testimony that you gave down at Montgomery the Legislature of Alabama—

Mr. Adair: I object.

Q. —the Virginia Right-to-Work Bill was passed by an overwhelming vote of the House?

Mr. Adair: I object.

Court: Sustained.

Mr. Wilkinson: We except.

Q. You identified Kromer as being what?

A. Plant Manager at the plant.

Q. Who was the other gentleman?

A. Don Blend.

Q. Blan?

A. Blend.

Q. What was his position out there at that time?

[fol. 147] A. He was Plant Manager at the time of the strike.

Q. Plant Manager at the time of the strike?

A. Yes, sir.

Q. Was he the No. 1 man out there, top man?

A. Yes, sir.

Q. Is he in Decatur now or moved away?

A. He moved to Detroit.

Q. Mr. Adair asked you something about this club that you were concerned with. What was the name?

A. The Decatur Industrial Employees Club.

Q. Where is the headquarters of that club?

A. It had no headquarters.

Q. Where was it located?

A. I don't know how to explain. In other words, myself and Secretary took care of the records.

Q. Was it a local organization in Decatur, or operated out of Detroit?

A. Oh, it was located entirely in Decatur.

Q. What officers did you have?

A. President, Secretary and Treasurer.

Q. How much did you pay the President?

A. Not anything.

Q. You didn't pay him \$12,000.00?

A. Nothing at all.

Q. How much did you pay the Vice President?

A. Nothing.

Q. How much did you pay the Secretary?

A. Nothing at all.

Q. In other words, that was a volunteer organization whose officers served without compensation. Is that correct?

A. That's right.

Q. How much dues did you charge a member?

A. \$1.00 per year.

Q. \$1.00 per year. Did I understand you correct?

A. \$1.00 per year.

Q. Tell us how much the union dues are a month?

Mr. Adair: I object; that's immaterial.

Court: Sustained.

Wilkinson: We went into the fact that he organized the club. We've got a right to show some of the controlling factors.

[fol. 148] Court: Sustained.

Mr. Wilkinson: We except.

Q. Mr. Adair developed from you that you were quite opposed to the union. Will you tell the jury the reason you are?

Mr. Adair: His reasons are immaterial.

Mr. Wilkinson: Not immaterial, if Your Honor please.

He went into—

Court: He can't give his undisclosed reasons for that.

Mr. Wilkinson: Not unless they asked to develop his interest and his attitude.

Court: He said what his attitude was. What moves him to have that attitude would be an undisclosed emotion or

action on his part which, as I understand, is not admissible.
Sustained.

Mr. Wilkinson: Reserve an exception.

That's all.

No recross examination.

BURL McLEMORE, next witness for the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Harris:

Q. State your name to the jury.

A. Burl McLemore.

Q. Where do you live, Mr. McLemore?

A. 401—11th Avenue Southwest.

Q. How long have you lived there?

A. About ten years.

Q. Where are you now employed?

A. Wolverine Tube Company.

Q. How long have you been employed there?

A. Five years this coming August.

Q. Have you been working there continuously for the last five years?

A. Yes, sir.

Q. Were you working there on July 18, 1951?

A. Yes, sir.

Q. What was your job?

A. Press operator.

Q. What shift did you work on?

[fol. 149] A. First shift, from eight until four.

Q. Eight in the morning until four in the afternoon?

A. Yes, sir.

Q. You remember when they had the strike out there?

A. Yes, sir.

Q. Is it your recollection that the first day of the strike was July 18, 1951?

A. Yes, sir.

Q. Did you start from your home on that day to the plant where you were employed?

- A. Yes, sir.
Q. Who was with you?
A. My son.
Q. What is his name?
A. Charles W. McLemore.
Q. How old was he at that time?
A. Eighteen.
Q. Were you driving your car?
A. Yes.
Q. Did you carry your lunch with you?
A. Yes, sir.
Q. You customarily carry a lunch and eat at the plant?
A. That's right.
Q. When you left your home that morning, had anyone told you or had you received information that there was going to be a strike on that morning?
A. No, sir.
Q. You had not heard that?
A. No, sir.

Mr. Adair: All these questions are leading. I do interpose an objection to any continuing to lead.

Court: Don't lead.

- Q. As you approached the plant, what did you see?
A. When I got along about the red light on 16th Avenue, I could see cars parked at the curve of the road coming from the Goodyear property.
Q. Go ahead.
A. When I got along that road, the cars was parked on around the curve toward the picket line. Ralph Webster, he [fol. 150] stepped out in the road and throwed up his hand and was popping his gums but I didn't know what he said. We had rolled up the glass and locked the door, and I pulled around him and went on around the curve.

- Q. You say Webster started raising his hand up and down to flag you down?
A. He threw up his hand to stop me.
Q. You didn't stop?
A. No, sir; Pulled around him.
Q. Go ahead and tell more.
A. There was cars parked solid on the right hand side

and some on the left. I usually get there a little bit earlier than the other employees. When I got nearly to the picket line, they went to throwing up their hands, hollering, "There's one that's not going through the line this morning."

Q. Somebody said what?

A. "There's one that's not going through the line this morning."

Q. Do you know who said that?

A. No, sir; it was someone carrying a sign.

Q. Someone that had a picket sign?

A. Yes, sir.

Q. Tell the jury what those people who had the signs were doing?

A. In my estimation there was twenty-five or thirty going in a circle across the road where it would be impossible to drive or walk through.

Q. Going around in a circle there in the street. I will ask you if they were extended clear across the pavement as they walked in that circle?

A. Yes, sir, and was off the pavement.

Q. Was there room between them for a car to have been driven through?

A. No, sir.

Q. You have gotten to the point where you said someone said, "There's one not going through". What happened then?

A. I was just a few feet of the picket line then, and my right door was locked, and Hovis grabbed hold of the handle and the handle give easy and he didn't hold. Another one grabbed at the windshield. My bumper was right up against the signs, and three or four grabbed the bumper.

Q. Did you stop the car or did they stop you?

A. They grabbed and I had to stop.

Q. Your car stopped?

A. Yes.

[fol. 151] Q. What happened then?

A. I told the boy to roll the glass down. Pete Runager said, "We don't want to have any trouble this morning. We're not going to let anybody in this morning."

Q. Runager said that? Was "Pete" a nick name for him?

- A. Yes, sir.
- Q. You know what his correct name is?
- A. No, sir. He is a caster in the casting shop.
- Q. Does he spell that "Runager"?
- A. I don't know.
- Q. He told you that they were not going to let anybody in?
- A. That's right. I said, "Turn the car aloose. I will back up." I backed up six or eight feet, and I put it in low and tried to go around to the left and I pulled off the pavement, and then the bunch gathered up in the front and somebody said, "Turn him over."
- Q. You pulled off to the left?
- A. Yes, sir.
- Q. Pulled off the pavement?
- A. Yes, sir.
- Q. Pulled off to the property of the Alabama Flour Mill, did you not?
- A. It was where the spur track crosses there.
- Q. Before you got to the switch track?
- A. Yes, sir.
- Q. You say the picket line moved over in front of you?
- A. Yes, sir; some of them grabbed my car and said, "Turn him over."
- Q. What happened then?
- A. Pete said, "Mack, we don't want to have no trouble this morning. The best thing for you to do is back up and turn around. You're not going to work this morning." I backed up in the road that goes to the Alabama Flour Mill and turned around. I got out and had my lunch in my hand, and I made two or three steps and I told my son—I gave him my lunch—and I told him, "You tell Mother I don't know what time I will be home if I can't get through." He went back and carried my lunch home. When he drove off, I tried to walk around the line, and Pete Runager grabbed my arm and Pete said, "I don't want to have any trouble with you this morning." I said, "Pete, my coveralls got awfully wet yesterday, and if they stay in there for two or three weeks and ruin, somebody will have to make them up." He said, "Quick as we get organized, I will call you; I will let you go through [fol. 152]. and get them." I said, "I appreciate that", and walked off.

Q. How long did you stay there?

A. An hour and a half.

Q. While you were there—do you know Paul Russell?

A. Yes, sir.

Q. Did you see Paul Russell drive up?

A. He drove up right after I walked across the road.

Q. As I understand you, after your car had been turned back, you tried to walk through the picket line?

A. Yes, sir. I tried to walk around it.

Q. They came up and stood in front of you?

A. Yes, sir.

Q. Did they have picket signs?

A. One or two caught me by the arm.

Q. Did Runager catch you by the arm?

A. Yes, sir.

Q. Did you make any other effort to get in?

A. No, sir.

Q. What was their apparent attitude? Were they angry or pleasant or how did they appear to be?

A. Appeared to be angry with me.

Q. You say you were there and saw Paul Russell there?

A. Yes, sir.

Q. Did you see him drive up to where the picket line was in the street?

A. Yes, sir.

Q. Did he stop there?

A. He stopped just a few feet before he got there. Howard Hovis grabbed his car, and he drug Howard Hovis maybe ten or fifteen feet on the pavement.

Q. You say Howard Hovis grabbed his car. Was the car moving when he grabbed it?

A. Yes, sir.

Q. After Hovis grabbed it and was dragged some few feet, the car came to rest?

A. It came to rest several times. He would put it in low and move up further.

Q. He was gradually moving up?

[fol. 153] A. Yes, sir.

Q. When he was up there, did you hear any picket shout or cry out?

A. Somebody said, "Turn him over if he ain't going to get out." "Turn him over." Four or five caught his left running board.

Q. Who caught his left running board? Do you know?

A. No, sir, I don't know who it was.

Q. Where did they come from?

A. Out of the picket line.

Q. When his car was there, were they at times immediately all around it?

A. Yes, sir, all around it like a bunch of birds.

Q. You talked about your coveralls being in there. Did Mr. Runager call you after that?

A. Yes, sir.

Q. When was that?

A. On the following Friday morning around ten or ten-thirty. The telephone rang and I answered it and said, "Hello", and I heard the operator say, "Deposit five cents, please." I said, "Hello", and he said, "Who is speaking?" I said, "Burl McLemore." He said, "Hey, Mack" (he always had a habit of saying "Hey, Mack"), he said, "We will let you through to get your coveralls if you will come out." I said, "I appreciate that." He said, "What time will you be out?" I said, "One o'clock." He said, "Come on out, we are going to let you through to get them."

Q. Did you have any conversation about your hand?

A. I said, "Pete, I hurt my hand and while I'm there I want to see the nurse." He said, "That'll be al-right."

Q. That was the following Friday?

A. Yes, sir.

Q. Did you go out there that morning?

A. About one o'clock.

Q. Tell the jury what happened when you got there.

A. I drove right up to the picket line and they gathered up like they did the first morning. Howard Hovis said, "Hell, Mack, what did you do to your hand?" I said, "What's it to you. You're no doctor." He said, "I guess it will be something to me; if you get through I will have to write a pass." I said, "I was called out here." Pete said, "I called him up. Write a pass and let him through." Hovis said, "Wait until Volk gets back from lunch." Pete said, "I told Mack it was al-right."

[fol. 154] Q. Hovis wanted to wait until Volk got back?

A. Yes, sir.

Q. Who was Volk?

A. I don't know. Union man. I don't know.

Q. After Runager told Hovis to write you a pass, did he write you a pass?

A. Yes. I heard somebody say, "By God, if they let him through, I'm going to quit and go home."

Q. Did you see Felton Dyer there on that occasion?

A. Yes, sir.

Q. Where was he?

A. Standing on the right of the picket line.

Q. Did he make any statement?

A. After they said that, I looked to see who was back there, and when I looked back, I looked right at Felton. He said, "By God, let Dr. Bragg doctor him. That's what the company is paying him to do."

Q. "By God, let Dr. Bragg doctor him. That is what the company is paying him to do"?

A. Yes, sir.

Q. Do you know Mr. Dyer?

A. (Pointing) Right there with the glasses on.

Q. He the man that said that?

A. Yes, sir.

Q. Did Hovis write you a pass?

A. Yes, sir.

Q. What did he write it on?

A. It had something on the other side, a blank, where to sign their name and when to report to walk the picket line.

Q. That was a blank form?

A. Yes, sir.

Q. And had "name" and the date to report to walk the picket line?

A. Yes, sir.

Q. What did he write on that?

A. I don't remember. "Burl McLemore is permitted to cross the picket line to see the nurse and pick up his coveralls there." Signed, Howard Hovis. About like that.

Q. What did you do then?

A. He said, "You can't go through in your car. You will [fol. 155] have to back up and walk in."

Q. How wide was that street?

A. Just an ordinary street.

Q. Wide enough for a car?

A. Yes, sir, two side by side.

Q. What did you do then?

A. I had to back up and cars was on both sides, and go back down the road about 200 feet, and Hovis—I reckon he thought they would not let me through—and he walked in the middle of the picket line and I went on down to the office.

Q. Did you get your coveralls?

A. Yes, sir.

Q. Get your hand dressed?

A. The nurse looked at it.

Q. Hovis walked on through the line with you?

A. Yes, sir.

Q. That was Friday following the strike?

A. Yes, sir.

Q. Did you go out there any more?

A. About three weeks later.

Q. What was the purpose of that?

A. The Credit Union—I had some money in the Credit Union, and I went to draw it out.

Q. You went to draw your money out of the Credit Union?

A. Yes, sir.

Q. What happened then? Did you talk to anybody?

A. I called the office, and asked them could they send me my money out of the Credit Union.

Q. You called the company office? Did you have any conversation with anybody on this picket line?

A. Nobody, but when I went in, Hovis, he stopped me and said, "Mack you not going to try to work are you? If you do try to work, I'm going to come and get you."

Q. Did he write you out a pass?

A. No, sir.

Q. Did he tell the picket line to let you through?

A. Yes, sir.

Q. How many were on the line at that time?

[fol. 156] A. Ten or twelve.

Q. Were they in the street?

A. Yes, sir.

Q. Did you go on in?

A. Yes, sir.

Q. Did they let you drive in?

A. No, sir.

Q. Did they tell you to park?

A. Yes, sir.

Q. Hovis said, if you tried to work that he would come get you?

A. Yes, sir.

Q. That was when, you say? About three weeks after the strike?

A. Yes, sir.

Q. Did you go out any more?

A. No, sir.

Q. Did you go back to work?

A. Yes, sir.

Q. On what day?

A. 22nd of August.

Q. Did you go with anybody?

A. Yes, sir.

Q. How many of you were there?

A. There was three of us in the car I rode in.

Q. Had you all formed a convoy or line somewhere else before you started in?

A. Yes, sir.

Q. How did you go in?

A. Went in a convoy that met on Sixth Avenue.

Q. Were there any law enforcement officers there at that time?

A. Yes, sir, the street was covered up with Highway Patrol and City officers, too.

Q. As you went into work, did they have up a picket line?

A. Yes, sir.

Q. Have signs?

A. Yes, sir.

Q. What else did they have?

A. Some had sticks. There was one or two piles of rock, pieces of brick and looked like concrete beat up.

[fol. 157] Q. Did you recognize any men on the picket line?

A. I didn't notice that morning.

Q. Was the windows of the car rolled up?

A. Rolled up and we locked the doors.

Q. As you were passing through and before you got on

company property, where the persons were lined up along the street, did anybody make any remarks?

A. Yes, sir.

Q. What did you hear?

A. "There goes one damn scab." "We will get you later." Stuff like that.

Mr. Adair: We object to that question and answer, and move that it be stricken on the ground that no one is identified as having made the remarks; it is not identified as to the defendants or the labor organization; and furthermore, his own testimony shows that the remarks were made on the 22nd day of August which we contend is beyond the period of time covered by this complaint. The plaintiff is complaining he was prevented from working from July 17th up to August 22nd, but there is no allegation that he was prevented from working on August 22nd. As a matter of fact, plaintiff and this witness' testimony shows he did work on the 22nd of August.

Mr. Harris: I prefaced my other question with "before he got to the company property." I understood his Honor's ruling and what his further rulings would be that that would be admissible.

Court: This man was there before Russell got there to go on to work. Overruled.

Mr. Adair: We except.

That's all.

Cross examination.

By Mr. Powell:

Q. You have been working out there at the Wolverine Tube Division, you say, for about five years?

A. Will be in August, yes, sir.

Q. And on the 17th of July, 1951, did you know at that time a strike had been called effective the next day, or the 18th of July?

A. No, sir, on that following day I asked Pete, "I heard you were going to strike." He said, "We haven't let anybody know yet." That was on the 17th day of July. He was [fol. 158] fixing, checking out to go to a meeting then.

Q. That conversation was in the plant?

A. In the dressing room, yes, sir.

Q. Had you been aware of the rumor and conversations out there between various employees from time to time for several weeks preceding the morning of July 18th that a strike had been discussed pro and con?

A. There's been rumors ever since the election, after they won the election if they didn't get what they wanted, they would strike.

Q. You heard that discussed?

A. Yes, sir.

Q. On the 17th of July, the day before the strike, you asked Pete Runager about the strike?

A. Yes, sir.

Q. Where were you in the plant at that time?

A. I was eating lunch in the dressing room, and he come in to change clothes. I said, "You sick?" He said, "I'm checking out to go to a meeting."

Q. Anything else?

A. I said, "Somebody told me you was going to strike tonight at midnight." He said, "We've not let anybody know we are going to strike."

Q. Who told you that?

A. It was rumored around.

Q. Someone in the plant told you they were to have a strike effective at midnight?

A. It was rumored around.

Q. Specifically, who was it told you that? Who did you hear say that?

A. Joe Sharp was one.

Q. He working there at that time?

A. Yes, sir.

Q. Working in the same department with you?

A. Yes, sir.

Q. And had you discussed it with him earlier before you talked to Pete that day?

A. He came by the press and made the remark, "I heard they are going to strike tonight."

Q. And had you heard some other fellows say they were going to strike tonight?

A. No, sir.

Q. Hear anybody say, "This is the last day before the strike"?

fol. 159] A. No, sir.

Q. You heard Pete Runager say, "We're going to strike tonight at midnight."

A. No, Joe Sharp.

Q. How long was that, in your best judgment, before you talked to Pete Runager?

A. A couple of hours.

Q. What time did you leave the plant that evening on the 17th?

A. Four o'clock.

Q. You didn't go back into the plant and didn't discuss with any of the employees out there, or have any knowledge before you went out the following morning of the 18th of the strike?

A. No, sir.

Q. Your son didn't work out there, did he, Mack?

A. No, sir.

Q. Never had?

A. No, sir.

Q. I believe you said he was seventeen or eighteen years old?

A. Eighteen-years old.

Q. He went out that morning with you?

A. Yes, sir.

Q. Why did he go with you?

Mr. Wilkinson: We object to that; illegal, immaterial.

Court: That calls for a conclusion.

Q. Had he ever gone with you prior to that time?

A. Yes, sir, about half of the time.

Q. Go to the plant with you?

A. Yes, sir, and bring the car back any time his mother wanted the car for anything. He would carry me and bring the car back.

Q. On this particular occasion, where were you and your son in your car with reference to the street out there, Railroad Street and Grant Street, or any other streets, intersections or avenues when you first learned of the crowd of people that you later discovered down there?

A. At the red light. From 16th, I could see cars parked around the curve.

Q. On 16th?

A. Yes, sir.

Q. In your judgment, how far was that west of the entrance to the plant?

[fol. 160] A. It was around a half a mile.

Q. Did you at that time discover several automobiles or a number of automobiles parked on either side of the street leading to the plant?

A. From the curve on.

Q. About a half a mile from the entrance to the plant?

A. About an eighth of a mile from where the cars was parked.

Q. Solid on your right on the south side of the street?

A. Yes, sir.

Q. There were some automobiles parked on your left or the north side of the street?

A. Yes, sir.

Q. Was there any people in those?

A. I didn't notice; most of them were empty.

Q. Was the street there where the automobiles were parked, up to the entrance down there or near the entrance to the plant property, opened or closed?

A. Closed to where the last switch track crosses the street.

Q. I am talking about where you first saw the cars parked on the west end of the street to the railroad.

A. We can't see that far around the curve.

Q. Did you stop when you first saw the cars?

A. No.

Q. The street was open?

A. It was open there.

Q. Do you have any judgment as to the width of the pavement of that street from where you saw the cars parked about a half a mile down to the entrance of the company property?

A. It was a little wider than the car.

Q. Cars on either sides?

A. Yes, sir.

Q. Room in your judgment for two cars to pass between

the cars that were parked on either side of that street at that time?

A. It is possible they could pass, yes, sir.

Q. Did you see any people up there half a mile from the entrance where you first saw the cars parked?

A. No, sir, nobody but Webster.

Q. Specifically, where was he?

A. He was just beyond that road that comes from Good-year, the bend in the road.

[fol. 161] Q. That was a considerable distance east of where you first saw the automobiles?

A. Yes, sir.

Q. How far in your judgment was it from the entrance of the road leading to Goodyear where you saw Webster to the Railroad or beginning of the plant property?

A. Eighth of a mile.

Q. Could you see the entrance of the property from where Webster was on that occasion?

A. No, sir.

Q. There a curve there in the road?

A. Yes, sir.

Q. What position was Mr. Webster in the street at the time you first saw him?

A. He was just standing off the pavement.

Q. On the curb?

A. On the dirt.

Q. Was he on the—assuming that street ran east and west, was he on the north or south side?

A. South side.

Q. Was anyone with him?

A. No, sir.

Q. You didn't see anybody with him?

A. No, sir.

Q. Any car in front or behind you?

A. No, sir.

Q. Just your car?

A. Yes, sir.

Q. You were driving at that time?

A. Yes, sir.

Q. As you approached the intersection of the street where you saw Webster, what was he doing?

A. He seen I wasn't going to stop and he stepped about two steps out, waved his hand, but I don't know what he said; I knew his mouth was going.

Q. But you couldn't hear well enough to determine what he was saying?

A. That's right.

Q. Waving his hand up and down?

A. Yes, sir.

Q. Did he appear to be angry or mad?

[fol. 162] A. He looked to be angry when I wouldn't stop.

Q. How did he look?

A. The way you look when you're angry. His face was red.

Q. Face was red?

A. Yes.

Q. Did you observe him after you passed him?

A. No, sir, I was going around; I didn't care anything about him.

Q. About how fast were you going, Mack, when you passed him?

A. Twenty-five or thirty.

Q. Your son was in the car on the front seat on the right hand side?

A. Yes, sir.

Q. That was the side Webster was on?

A. Yes, sir.

Q. Any automobiles back on the south or north side of that street in the vicinity where you saw Webster?

A. Just beyond him on the right.

Q. Did he step to the center of the street?

A. Just about two steps from the south side of the street.

Q. He waved and said something?

A. Yes, sir.

Q. You didn't understand?

A. No, sir.

Q. You didn't stop?

A. No, sir.

Q. Did you see him any more on that occasion?

A. No, sir.

Q. Was that the last time you saw him that day?

A. That's right.

Q. Did you hear him say or do anything after that occasion?

A. No, sir.

Q. After you passed Webster, you proceeded on eastwardly around the curve and then what did you see?

A. All the cars on the left side and solid on the right and all the people gathered in the street and people walking with signs.

Q. Where were the people congregated, Burl, with reference to the railroad down there or where the picket line was? Where did you see this crowd of people?

A. Right up against the picket line on both sides.

[fol. 163] Q. Tell us where you saw—the specific location—where you saw the picket line that morning.

A. It was right where the switch track crosses the road.

Q. At the railroad?

A. Yes, sir.

Q. What was the picket line doing when you arrived?

A. Milling around and around.

Q. Was the picket line walking in a circle?

A. It wasn't a complete circle but you could call it that.

Q. Traversing the entire width of that pavement?

A. They extended beyond on each side.

Q. Walking beyond the curb on either side in a circle or circular motion?

A. Yes, sir.

Q. Do you have any judgment as to how many, the number of pickets on that occasion, was making up that picket line?

A. My best judgment, I would say around twenty or thirty, twenty-five.

Q. Did you know Howard Hovis at that time?

A. Yes, sir.

Q. Did you see him down there?

A. Yes, sir.

Q. Where was he?

A. He grabbed hold of the handle of my car.

Q. Was that before you got to the picket line?

A. It was six or eight feet of the picket line.

Q. Was he carrying one of the plaques in the picket line when you first saw him?

A. No.

Q. Where was he?

A. He stepped out of the bunch of people standing up against the picket line; up in that bunch.

Q. You have any judgment as to the number of people you saw out there that morning?

A. Two or three hundred.

Q. Two or three hundred?

A. Yes, sir.

Q. You didn't know all of them?

A. I knew all of the faces, but I didn't know the names.

[fol. 164] Q. You saw many people there, didn't you, that you didn't know, didn't you?

A. Not many that didn't work there.

Q. Didn't you see some ladies there that morning?

A. There was a couple about 50 yards before I got to the picket line.

Q. Did you see any children?

A. I didn't notice any children.

Q. Standing on either side of that paved portion of that street near the intersection of the road, by the railroad?

A. No, sir, I didn't notice any children.

Q. You tell this jury that the number of people you saw, most of them were employees of Wolverine?

A. Yes, sir.

Q. That was about what time in the morning?

A. I got there around 25 after 7.

Q. Did you meet any cars, automobiles or vehicles of any kind as you went in from the time you first saw the cars parked until you got down there?

A. No, sir.

Q. Did any pass you?

A. No, sir.

Q. Did you see any coming or going as you went in there?

A. No, sir.

Q. How far was Mr. Hovis from the picket line when you first saw him?

A. About ten or fifteen feet.

Q. Where was he with reference to where you were in the road?

A. On the south side of the street.

Q. Was he on the curb?

A. Off the curb on the dirt.

Q. Was that before you stopped or about the time you stopped?

A. I was slowing down; I wasn't completely stopped.

Q. How far were you then, in your judgment, from where you saw the picket line at the railroad track?

A. Eight or ten feet, something like that.

Q. That was about the distance Hovis was west of the picket line on the south curb?

A. Yes, sir.

Q. Tell us what you saw Hovis do at that time or what did he say?

A. When I went by, he made a step toward the car and [fol. 165] grabbed at the *the* handle. The handle flipped because the door was locked and the glass rolled up.

Q. Was that handle on the right hand side?

A. Yes, sir.

Q. Your car—you have two doors on that side?

A. One.

Q. And the door was locked?

A. Yes, sir.

Q. Did you see him make a lunge for the handle?

A. He caught ahold, because it was locked and it flipped easy.

Q. Did he fall?

A. No, sir.

Q. Did he say anything immediately before that?

A. If he did, I didn't hear it; I had the glass up on that side.

Q. You didn't hear what Webster said up there at the time he spoke to you?

A. I looked at him and saw his mouth working.

Q. Did you see Hovis run over to your car?

A. When I started by, he made a step and reached out and grabbed at the handle.

Q. He didn't say anything, or if he did, you didn't hear it?

- A. No, sir.
- Q. He didn't give any sign with his hands?
- A. No.
- Q. You were slowing down at that time?
- A. Yes, sir.
- Q. Moving gradually forward?
- A. Yes, sir.
- Q. And came to a stop immediately east of the picket line?
- A. When I came to the picket line.
- Q. You eased up to them and stopped your car?
- A. Yes, sir.
- Q. Is that when you saw Pete Runager?
- A. Yes, sir.
- Q. Did he come over to your window on the left?
- A. He walked up to the side where son was. I said, "Son, roll your glass down."
- Q. That was on the right side?
- [fol. 166] A. Yes, sir.
- Q. Hovis was standing at the window at that time?
- A. Yes, sir.
- Q. Tell the jury what was said.
- A. Pete Runager said, "Mack, we don't want to have trouble out of you boys this morning. Not anyone going in to work this morning."
- Q. What did Howard Hovis say to you?
- A. He didn't say anything.
- Q. He just stood there? Did he grab the handle then?
- A. He grabbed the door part. He could catch on the top of the door.
- Q. Just grabbed it?
- A. Yes, sir.
- Q. Didn't make any statement?
- A. No, sir.
- Q. How long did he hold the car?
- A. I guess about a minute.
- Q. What did he then do?
- A. When Pete told me what he did, I said, "Turn the car aloose and I will back up." They all turned aloose.
- Q. When you asked them to turn aloose and you said

you would go on out, Hovis and the others released your car?

A. I didn't say I would go out. I said, "I will back up."

Q. They released it?

A. I backed six or eight feet and cut to the left and tried to go around the picket line.

Q. Backed up how far?

A. Six or eight feet.

Q. But they remained where they were?

A. Yes, sir.

Q. And when you backed up, then you put it in forward gear and pulled over to the left and tried to go around the picket line?

A. Yes, sir.

Q. The picket line at that time was circling the entire street?

A. Yes, sir.

Q. Covering the entire paved area?

A. Yes, sir.

Q. And walking up on the curb on the north and south sides?

A. There wasn't any curb there.

Q. What was immediately north?

[fol. 167] A. Smooth ground before you get to the switch track.

Q. What did you do with the car then? Where did you next go?

A. I got up nearly even with the picket line until they stopped me.

Q. Did you leave the paved portion of the street?

A. On the dirt, yes, sir.

Q. You say they stopped you? Who?

A. Four or five carrying signs run in front and Pete and Hovis grabbed the same side. He said, "Mack, I told you I don't want to have any trouble. Back out. Not anybody going through today."

Q. "We don't want to have any trouble with you. You're not working today"?

A. Not going to let anybody in to work today.

Q. What did you say?

A. "Turn aloose and I will back up and turn around."

I backed up into the Alabama Flour Mill and turned around.

Q. Headed back toward town?

A. Yes, sir.

Q. And then you let your son have the car and you stayed there?

A. Yes, sir.

Q. How long did you stay there?

A. Couple of hours, or an hour and a half; I didn't time it.

Q. Did you see Felton Dyer that day?

A. Yes, sir.

Q. Where was he when you were up there in the car?

A. In the bunch next to the picket line.

Q. What was he doing?

A. Standing up there.

Q. Was he in the paved portion of the street?

A. No, standing off on the edge of the ground.

Q. Which side?

A. South side.

Q. Upon or beyond the south curb of the street?

A. Yes, sir.

Q. What was he doing?

A. Just standing there with the rest of them.

Q. The rest of who?

A. Theo Morris, Aaron Jones, Aaron Julian.

Q. Did you hear him say anything or did you see them do anything during that time?

[fol. 168] A. No special thing; no, sir. There was so many hollering and going on, you couldn't tell who it was unless you was looking at the time.

Q. Where were you when you first saw Paul Russell?

A. I'd just got out of the car for four or five minutes and stepped on the pavement on the south side when he drove up.

Q. West of the picket line at that time?

A. Yes, sir.

Q. How far in your judgment west of the picket line?

A. Twenty or thirty feet.

Q. You were just standing with the other fellows?

A. Yes, sir.

Q. Anyone there with you?

A. Yes, sir.

Q. Did you see Webster or Hovis at that time?

A. I saw Hovis at that time; but not Webster. When Paul drove up, Howard Hovis grabbed him on the left and swung on to his car, and Paul was still moving and his feet were dragging on the pavement.

Q. Hovis?

A. Yes, sir.

Q. Did you notice Felton Dyer around there, or Webster?

A. Webster wasn't around there.

Q. Did Paul Russell come in the same way you did?

A. Yes, sir.

Q. How long was it from the time you got out of the car on the south curb until he came down there?

A. Four or five minutes.

Q. Was anyone in the car with him?

A. Not when he first drove up and stopped.

Q. Did he stop just about where you were standing?

A. He slowed up there and that's where Howard Hovis went up.

Q. Was Howard Hovis on the north side as he caught hold of the car?

A. On the north.

Q. You on the south side?

A. Yes, sir.

Q. You say Hovis grabbed the car?

A. Yes, sir.

Q. What part of the car did he take hold of?

A. Top of the door.

Q. Was Mr. Russell's glass down at that time?

[fol. 169] A. Yes, sir, I guess it was; his feet was dragging because you could hear them.

Q. Did you hear any conversation between Russell and Hovis?

A. I just heard Hovis tell him, "Paul, don't act that way. I want you to stop and not give us any trouble." Paul put the car in low and eased up to the picket line. He done that several times before he got down to the picket line, and finally they gathered around his car.

Q. You saw, as I understand your testimony, you saw

Howard Hovis go over to the car and take hold of the top of the door of the Russell car as he went in?

A. Yes, sir.

Q. You heard Hovis tell Russell, in substance, "We don't want you to give us any trouble."

A. Yes, sir.

Q. You heard his feet dragging along as that conversation transpired?

A. Yes, sir.

Q. In your judgment, how far did Russell's car drag Hovis?

A. Ten or fifteen feet.

Q. Did Hovis ever get on the street?

A. No, sir, he was swinging with his hands.

Q. Holding his weight on the upper part of the car with his hands?

A. Yes, sir.

Q. And while he was talking to Russell, he started up and slowed up for several times and covered in distance, in area, about how many feet?

A. 15 or 20 feet.

Q. Then did he stop his car?

A. After he got to the picket line.

Q. Did you hear any conversation at that time or witness any conversation at that time between Hovis or anyone and Russell?

A. I couldn't understand it.

Q. You didn't hear any conversation that took place between Russell and anybody after they moved on past you from where he stopped from dragging Howard Hovis?

A. Howard Hovis said, "Stop him; stop him."

Q. Hovis said that?

A. Yes, sir.

Q. He was being dragged when he said that?

A. Yes, sir.

Q. Appeared to be excited at that time?

[fol. 170] A. He was hollering; he was wanting somebody to help.

Q. Appeared to be in a position of peril?

A. He wanted somebody to help. He needed help.

Q. Looked like he needed help?

A. From the way he was dragging, looked like he did.

Q. When you went in that morning, it was the 18th of July, it was a clear day that morning, wasn't it?

A. No, sir, it wasn't raining.

Q. It wasn't cloudy?

A. I didn't notice.

Q. Hot weather?

A. Warm weather.

Q. You say you had all the windows rolled up and the doors locked?

A. No, sir.

Q. Have them down?

A. I had the one on the right up. Mine was down.

Q. On your side, the driver's side?

A. Yes, sir.

Q. I will ask you when did you tell the boy to roll up the window on his side?

A. When we was going along where Webster was.

Q. After you had seen these cars out there?

A. Yes, sir.

Q. You knew at that time there was a strike?

A. I didn't know just what; knew something was happening.

Q. You told the boy to roll up the glass and lock the door on his side?

A. Yes, sir, he's a sorta of a nervous type of boy.

Q. That was well before you got down around the curve where you saw the picket line?

A. Yes, sir.

Q. Burl, isn't it a fact that you kept your lunch with you after you got out of the car?

A. No, sir.

Q. You didn't keep it?

A. No, sir.

Q. Did you see Webster down there just before you left that day and give him your lunch and offer it to him and tell him, "Here's my lunch. You will need it"?

[fol. 171] A. No, sir, my son carried my lunch back home.

Q. You didn't give him your lunch?

A. No, sir.

Q. And you didn't see him after you passed him in the street?

A. No, sir.

Q. You not a member of the union?

A. No, sir.

Q. You ever belonged to the union?

A. Not exactly, no, sir.

Q. You have made application for membership in a union?

A. Yes, sir, one time.

Q. Here in Decatur?

A. Yes, sir.

Q. You have a case just like this case that is set for trial in this court Monday?

A. Yes, sir.

Q. You the plaintiff in that case?

A. That's right.

Q. You interested in the outcome of that case and this case?

A. I'm interested in the outcome of the next one.

Q. Your feelings toward the union and members isn't good?

A. That's my opinion; yes, sir.

Redirect examination.

By Mr. Harris:

Q. Mr. Powell was asking you something about hearing there was to be a strike that night. I will ask you if, for some period before the strike occurred, if there had or had not been rumors there was going to be a strike?

A. Yes, sir.

Q. How many such rumors were there?

A. There's been so many, I couldn't tell.

Q. Frequent rumors?

A. Yes, sir.

Q. And the strike would not be pulled?

A. No, sir.

That's all.



Mr. Harris: We offer in evidence the plaintiff's inter-[fol. 172] rogatories to the defendant, International Union, UAW, and their answers to them. We would like to have

the questions and answers read. This will be plaintiff's Exhibit "9".

(Mr. Wilkinson reads the questions and Mr. Harris, the answers.)

PLAINTIFF'S EXHIBIT 9

Said Exhibit "9" for the plaintiff is in the following words and figures, to-wit:

IN THE CIRCUIT COURT OF MORGAN COUNTY, ALABAMA.

"PAUL S. RUSSELL, Plaintiff,

v.

v

**INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, C.I.O.,
An Unincorporated Organization, et al., Defendants.**

Comes the plaintiff in the above styled cause and propounds the following interrogatories unto the defendants, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C.I.O., an unincorporated organization, hereinafter referred to as "International Union"; Local 68 of the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C.I.O., an unincorporated organization, hereinafter referred to as "Local Union"; Congress of Industrial Organizations, an unincorporated organization, hereinafter referred to as "C.I.O."; and Michael Volk, *separate* answers to which by each of said defendants are required under oath, that is to say?

1. State the date your organization was organized and whether or not it is a corporation or an unincorporated organization or association, and attach a copy of your charter and articles of incorporation, if incorporated. (Heading of answers: COMES Now the defendant, INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL

IMPLEMENT WORKERS OF AMERICA, (UAW-CIO), and subject to their Plea to the Jurisdiction and Demurrers heretofore filed in the within case, and specifically reserving said plea and demurrers, and without waiving same, and answer the interrogatories propounded to it by plaintiff, and respectfully shows that court the following, said answers being numbered to concur with the numbers of the respective question being answered:)

Answer 1. International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, (UAW-CIO), was organized in August 1935 and said International Union is an unincorporated voluntary association.

2. Attach to your answers a true and complete copy of the constitution, articles of association, and by laws of [fol. 173] your organization in effect on July 18, 1951, and also all rules and regulations governing or pertaining to membership, procedure, strikes, picketing, and officers and their duties.

Answer 2. Attached hereto and made a part hereof is a copy of the Constitution of the International Union. Said Constitution contains all rules and regulations now in existence governing and pertaining to membership, procedure, strikes, picketing, officers and their duties, and said International Union has no other articles of association or by laws.

STATE OF ALABAMA,
MORGAN COUNTY.

I hereby certify that the Constitution of the International Union (attached to said answer as above set out) is a small booklet of some 118 pages containing many tables of fine print and the book itself being of fine print, it is not possible to copy the same into the record; and I have this day placed said exhibit to the answers in the hands of the Clerk of said court to be forwarded with the record in this cause.

This, August 24, 1953.

SARAH C. DUTTON
Official Reporter.

3. If any change was made in any document called for in the preceding interrogatories between April 27, 1951 and September 25, 1951, state all changes made and give the respective dates thereof.

Answer 3. The last Convention of the International Union was held April 1 through April 6, 1951, and all amendments there adopted are included in the Constitution above referred to and attached hereto. There have been no changes in said Constitution since said date.

4. State whether or not T. J. Starling, M. E. Duncan and Michael Volk were members of your organization on July 18, 1951 and if so when each became such and how long each has remained such.

Answer 4. T. J. Starling, M. E. Duncan and Michael Volk were members of this organization on July 18, 1951. T. J. Starling became a member of this union in 1936 and has been a member at all times since said date. M. E. Duncan became a member of this union in 1935 and has been a member at all times since said date. Michael Volk became a member of this union in 1937 and has been a member at all times since said date.

5. State whether or not the persons named in the immediately preceding interrogatory were officials, employees, agents, or representatives of your organization on July 18, 1951, and, if so state how long each had been and re-[fol. 174] mained so connected, and state in full detail the duties and functions of each during that time.

Answer 5. T. J. Starling was on July 18, 1951 Regional Director of Region 8 of this union and as such was a member of the Board of Directors of this union, having held office since August 1941. M. E. Duncan was Assistant Regional Director of Region 8 of this union on said date, having held said office since October, 1949, he having been from November 1943 until October 1949, an International Representative of this union. Michael Volk on said date was an International Representative of this union, having been such since October 1941, excluding time in service with the armed forces. The duties of each of the above mentioned officers are set forth in detail in the Constitution hereto attached.

6. Were one or more of said persons in Decatur, Alabama at any time between April 27, 1951 and September 25, 1951, and, if so, state which was in Decatur and the respective period or periods during which said parties or either of them was in Decatur and the business or transaction concerning your organization which was conducted by each of said parties on each occasion he was in Decatur between said dates?

Answer 6. All of said persons were in Decatur, Alabama on several occasions between April 27, 1951 and September 25, 1951, and upon each such occasion their business and transactions had to do with the affairs of this union in connection with the organization of and representation of for the purpose of collective bargaining, the employees of Calumet and Hecla Consolidated Copper Company (Wolverine Tube Division).

7. Did your organization call a strike against Calumet and Hecla Consolidated Copper Company (Wolverine Tube Division) at its plant in Decatur, Alabama, or of the employees of said plant on or about July 17, 1951, and if so state how said strike was called, and, if by motion or resolution, attach a copy of said motion or resolution?

Answer 7. In the months of May and June, 1951, representatives of this union were engaged in an attempt to negotiate a collective bargaining agreement with Calumet and Hecla Consolidated Copper Company (Wolverine Tube Division) to cover the wages, hours and working conditions of the production and maintenance employees in its Decatur, Alabama plant. At meetings in late June or early July, 1951, employees of said company in attendance voted by secret ballot to authorize a strike should the same be necessary upon a stalemate in collective bargaining negotiations being reached. M. E. Duncan was in attendance at said [fol. 175] meeting. On July 17, 1951, M. E. Duncan reported to employees assembled in meetings that a stalemate had been reached in bargaining negotiations and said employees in attendance again voted to strike, which strike began at 8 o'clock on July 18, 1951. Representatives of defendant have been unable to locate the minutes of said meetings.

8. Did the International Union or C.I.O., both or either, or its officers or agents, counsel with or advise the Local

Union, or its officers or agents, with reference to calling said strike and the conduct thereof, and if so state in detail all that was said and done by and between all parties so engaged during the entire period from the date the calling of said strike was being considered until September 25, 1951, and attach the originals or copies of all letters, telegrams, and memoranda exchanged?

Answer 8. The representatives of this International Union as the authorized collective bargaining agent for the production and maintenance employees of said Decatur, Alabama plant of Wolverine Tube counseled with and advised the employees of said company with reference to calling said strike and the conduct thereof. This union can not answer for the Congress of Industrial Organizations, but so far as is known by it, or its representatives, the Congress of Industrial Organizations had no part in and was in no way connected with said strike. There was no local union of this union in legal existence at said time and place, as is explained in the answer of M. E. Duncan as International Representative acting for Local Union 68 to these interrogatories. This union conducted and financed said strike. This defendant declines to answer the remainder of said question for the reason that same is too vague and indefinite, the same is unreasonable, and many of the things called for in said question are irrelevant and immaterial to the issues now before the court.

9. State in full the names of each and every member of the Local Union who was a member of the Local Union at any time during 1951 prior to September 25, 1951, and state during what time prior to September 25, 1951 each of said parties was a member of the Local Union.

Answer 9. There were no members of a UAW-CIO Local Union in Decatur, Alabama. Defendant declines to answer further for the reason that the names of each and every member of this union are irrelevant and immaterial to the issues now before the court.

10. Is it not a fact that each member of the Local Union was also a member of the International Union and also a member of the C.I.O.?

Answer 10. Defendant shows that all employees of the

[fol. 176] Decatur, Alabama plant of Wolverine Tube who joined UAW-CIO were members of this International Union and were not members of any local union of this International Union. This defendant can not answer for the Congress of Industrial Organizations, but shows that its members are not members of the Congress of Industrial Organizations.

11. Were there a number of persons picketing Railroad Avenue at the immediate vicinity of the said plant on July 18, 1951 and subsequent thereto?

Answer 11. Yes.

12. Over what period of time was said picketing conducted?

Answer 12. Picketing was continued on Railroad Avenue from July 18, 1951, until September 24, 1951.

13. What persons were engaged in said picketing?

Answer 13. Practically all members of this union who were employees of said plant engaged in said picketing from time to time.

14. Did the Local Union have various meetings during the months of July and August, 1951?

Answer 14. Representatives of this union called various meetings of the employees of said plant in July and August, 1951.

By Mr. Harris: In this answer you have "1941" where it should be "1951".

By Mr. Adair: I am willing that the correction be made. 1951.

15. Were the three persons named in interrogatory number 4, or one or more of them present at a meeting or meetings of the Local Union in July and August, 1951, and, if so, state how many meetings each of them attended and give the dates of said meetings as nearly as possible?

Answer 15. One or more of the three persons named in Interrogatory No. 4 were present at meetings of the employees of said plant called by this union in July and August, 1951. After the strike began the employees of the plant were notified of and consulted with concerning the

business of the strike at the picket line so that few meetings were called from July 18, 1951, through August, 1951. A representative of this union, usually one of the three persons named, was present at practically all meetings and was present on the picket lines at practically all times. The remainder of said question is impossible to answer due to the lapse of time.

16. At said meetings did one or more of said persons [fol. 177] make talks or speeches to the members of the Local Union, and, if so, state what was said in said speeches or talks?

Answer 16. One or more of said persons from time to time made talks or speeches to the employees of said plant. The remainder of said question is impossible to answer as no record of said speeches or talks were made.

17. At said meetings did one or more of said persons speak words of encouragement to the members of the Local Union as to favorable results to be produced by said strike?

Answer 17. Yes.

18. At said meetings did one or more of said persons encourage the picketing of said plant and suggest or insist that said plant be picketed during the strike?

Answer 18. One or more of said persons instructed the employees on strike as to the method in which picketing was to be conducted and instructed said employees that this union insists upon peaceful picketing in the strikes conducted by it.

19. Is it not a fact that your organization furnished food or lunches to certain persons who picketed said plant during said strike, and, if so, state the dates on which said food or lunches were furnished and for how many persons?

Answer 19. Yes. This union furnished food and lunches to pickets on duty during said strike. Defendant declines to answer the remainder of said question for the reason that the same is irrelevant and immaterial to the issues now before the court.

20. Is it not a fact that your organization furnished food or groceries or other articles of value to those who picketed said plant during said strike or to members of their famil-

ies, and, if so, state over what period of time the same was furnished.

Answer 20. The union furnished food and groceries to employees of said plant on strike from approximately Friday, July 27, 1951, until December, 1951.

21. Is it not a fact that the International Union furnished money to the Local Union during said strike, and, if so, state how much money was furnished and the dates of the furnishing of the same and the purpose thereof?

Answer 21. This union financed said strike at a total cost of approximately \$68,000.00 for the purposes of food, fuel, mortgage interest, insurance premiums, rent and mortgage [fol. 178] payments, school books and lunches, medical attention, transportation, utilities, etc., incident to the conduct of the strike and the well-being of the strikers, same being furnished and paid by this union largely during the year 1951. Defendant gives this answer without waiving its objection that the facts requested are irrelevant and immaterial to the issues now before the court.

22. Is it not a fact that on or shortly prior to August 21, 1951 the International Union made arrangements with National Surety Corporation to furnish bail bonds in Decatur, Alabama for such of its members as might be arrested in Decatur, Alabama and as might be requested by M. E. Duncan or Michael Volk, no bond to exceed \$1000.00 in amount nor the aggregate thereof to exceed \$25,000.00?"

Answer 22: Yes."

Mr. Powell: We object to that on the ground that it is immaterial, irrelevant and incompetent and sheds no light on the issue involved in this case, and move that the answer read by Mr. Harris be excluded.

Court: Any objection filed when the answer was filed?

Mr. Harris: No, sir.

Court: Overrule the objection.

Mr. Powell: Reserve an exception.

23. State what representative of the International Union made such arrangements and how the same were made and if by telephone state what was said in the telephone conversation and if by letter or telegram attach a copy of the same.

Answer 23. Defendant shows that the information requested is irrelevant and immaterial to the issues now before the court.

24. Is it not a fact that at the time said arrangements were made it was known by the officials or certain of the officials of the International Union that said plant had been closed down or put out of production by said strike and that it was being picketed by members of the Local Union and that the company operating said plant had publicly announced and advertised that it would be open for work on the morning of August 22, 1951?

Answer 24. The information requested is irrelevant and immaterial to the issues now before the court, because when said plant reopened on August 22, all employees who desired so to do crossed the picket line and returned to work, and no employee was prevented from returning to work by violence, intimidation or coercion.

25. Is it not a fact that pursuant to the arrangements inquired about in interrogatory number 22, Duncan and Volk on or about August 23, 1951 called on the local agency of the National Surety Corporation in Decatur, Alabama [fol.179] and requested the execution of a bail bond for a person who, while picketing said plant, had been arrested on a charge of having committed an assault and battery on the person of an employee of said plant who was on his way to the plant.

Answer 25. The information requested is irrelevant and material to the issues now before the court because no employee was prevented from entering said plant by violence, intimidation or coercion.

26. Did your organization send to Decatur, Alabama at any time in July or August, 1951 any person or persons to picket said plant or contribute directly or indirectly to the expenses of any person coming to Decatur, Alabama for the purpose of picketing said plant, and, if so, state all that was done by your organization in that connection?

Answer 26. Defendant shows that Question 26 is vague, ambiguous and indefinite, but it shows that it brought no persons into Decatur, Alabama for the purpose of picketing

said plant other than its representatives who were in charge of the conduct of the strike.

27. Did your organization furnish to any person who was an employee of Calumet and Hecla Consolidated Copper Company at its Decatur, Alabama plant and who was out of employment by reason of the strike against said company money for the payment of any obligation or obligations of such persons, or did your organization pay any obligation or obligations of any of such persons, and, if so, state fully the amounts expended by your organization in that connection and to whom payments were made?

Answer 27. Yes. Defendant declines to answer this question more fully for the reason that the information requested is irrelevant and immaterial to the issues now before the court.

28. Is it not a fact that, on or about August 22, 1951 Michael Volk stated to members of your organization in substance that no tubing would leave the said plant?

Answer 28. This defendant can not answer Question No. 28 for lack of information, and further shows that the same is irrelevant and immaterial.

29. Is it not a fact that in August, 1951 members of your organization, meeting in Decatur, Alabama, considered ways and means of preventing employees from entering said plant for the purpose of working therein and also considered plans for preventing locomotives and cars from entering into said plant or coming out of the same by rail?

Answer 29. No. On July 17, 1951 representatives of the union explained the method and peaceful manner in which [fol. 180] picketing would be conducted. No further meetings were conducted for the purposes stated. All employees who desired to enter said plant for any purpose between the period July 18, 1951 and August 21, 1951, inclusive, were permitted to do so. However, said plant was not open for business during said period. Said plant reopened on August 22, 1951 and all persons desiring employment returned to work.

30. Is it not a fact that on or about August 20, 1951 Michael Volk and James Russell appeared before the City

Council of the City of Decatur, Alabama and protested the placing of policemen near the picket line at the immediate vicinity of said plant?

Answer 30. Defendant can not answer Question No. 30 for lack of information.

31. Is it not a fact that on the morning of July 18, 1951 M. E. Duncan was present among and with the persons picketing said plant and that the said M. E. Duncan and other persons picketing said plant stopped automobiles transporting employees of said plant on Railroad Avenue and told said employees that they could not enter said plant and that they were blocking traffic and would have to turn around and could not enter the plant?

Answer 31. No. M. E. Duncan was present at the picket line on July 18, 1951, but no one told any employees that they could not enter said plant. Persons arriving at the plant were told that there was a strike on and were peacefully requested not to cross the picket line and were truthfully told that the plant was closed and was not open for business, and said persons were requested not to block traffic. No one was told they could not enter the plant so far as this defendant is advised.

32. Is it not a fact that on July 18, 1951, and between that date and August 22, 1951, the persons picketing said plant stopped numerous persons who were on their way toward said plant and demanded of them their identity and demanded to know the nature of their business in said plant and consented to said persons entering said plant only on their promise or statement that they did not intend to engage in work in said plant and desired to enter said plant only for the purpose of getting tools or to transact business with the company credit union or other purposes disassociated from engaging in work in said plant?

Answer 32. No. All persons entering said plant during the period stated were requested to stop at the picket line [fol. 181] and their business was inquired of. No promises were demanded that persons entering would not work, but persons entering were advised that officials of said plant had requested that all persons be advised that the plant was closed, and that said persons be told that they could

enter only for the purpose of getting tools, transacting business with the credit union, going to the company dispensary, making sales to the company, and other purposes disassociated from productive work in said plant.

33. Please state the connection between your organization and Carey Haigler and John G. Ramsay, and if it is stated that said parties were officers, agents, servants, employees, or representatives of your organization state their duties in full and state whether or not said parties came to Decatur, Alabama in August, 1951 and what they did while in Decatur with reference to the affairs of your organization and particularly with reference to the strike against said plant and the picketing of said plant.

Answer 33. There is no connection between this union and Carey Hagler and John G. Ramsay. Carey Hagler is State Director of the CIO Organizing Committee and John G. Ramsay is a Public Relations Representative of the CIO Organizing Committee. This defendant can not state whether or not Carey Hagler was in Decatur, Alabama prior to August 22, 1951, but is advised and believes that he was in Decatur subsequent to the reopening of the plant after plaintiffs resumed work. John G. Ramsay was requested by M. E. Duncan to come to Decatur on two occasions to talk to Ministers and other persons with reference to public relations in gaining public sympathy and support for the strike of Wolverine Tube employees,

34. Is it not a fact that shortly after said plant at Decatur, Alabama resumed operations on or about August 22, 1951 that Local 174 of International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C.I.O., went out on strike against the Detroit plant of Calumet and Hecla Consolidated Copper Company, and that the reason for this strike was the fact that the company had been able to operate its Decatur, Alabama plant notwithstanding the strike against it?

Answer 34. Defendant declines to answer Question No. 34 for the reason that the information requested is irrelevant and immaterial to the issues now before the court.

35. State what officials of your organization advised or

recommended or suggested the said strike against said Detroit Plant.

Answer 35. Defendant declines to answer Question No. 35 for the reason that the information requested is irrelevant [fol. 182] and immaterial to the issues now before the court.

36. Is it not a fact that Michael Volk was advised in a telephone conversation from the office of Walter Reuther, President of the International Union, on or about September 24, 1951, that the dispute between the union and the company concerning its Decatur, Alabama plant had been certified to the Wage Stabilization Board and that it was suggested to Volk that the strike at the Decatur, Alabama plant be terminated and that the persons picketing said plant be removed and that there be no further picketing?

Answer 36. Yes, but defendant shows that the information sought is irrelevant and immaterial to the issues now before the court.

37. If the foregoing interrogatory is not answered in the affirmative, then state the substance of the conversation between Volk and the office of Walter Reuther concerning the matters inquired about.

Answer 37. No answer is required to this question as the foregoing question is answered in the affirmative.

38. Is it not a fact that following said telephone conversation Volk arranged for a meeting of the membership of the Local Union and suggested that the strike be terminated and that said pickets be removed, and that the Local Union voted unanimously to do so?

Answer 38. Yes, but defendant shows that said information is irrelevant and immaterial to the issues now before the court.

39. Is it not a fact that following said meeting said pickets were removed about 8:30 P.M. on Monday, September 24, 1951?

Answer 39. Yes, but defendant shows that said information is irrelevant and immaterial to the issues now before the court.

40. Is it not a fact that between July 18, 1951 and Septem-

ber 24, 1951 accomodations for the use and convenience of the persons picketing said plant were set up near said plant by your organization, and, if so, state in detail of what said accomodations consisted, when the same were erected or set up and the purpose for which the same were used, and what individuals took part in erecting or setting up the same, and who paid the expense thereof?

Answer 40. About a week after July 18, 1951, on which date the strike at said plant commenced, tents for the shelter of pickets were erected at the picket line to protect said pickets from mid-summer heat. Defendant can not state who participated in the erection of said shelters. Said shelters were borrowed or furnished by employees on strike.

[fol. 183] 41. State whether or not either Michael Volk, M. E. Duncan or T. J. Starling had any business in Decatur, Alabama between July 1, 1951 and September 25, 1951 other than concerning the strike against said plant in Decatur, Alabama and the picketing of said plant, and, if so, state in detail the nature of such business and what was done in and about the same by said persons and on what dates such other business was transacted.

Answer 41. The persons mentioned had no other business in Decatur, Alabama between July 1, 1951 and September 25, 1951, other than concerning the negotiations with said plant, the strike against said plant and the endeavor to settle said strike.

42. If you state that there was no such organization or entity as the Local Union, or if you have not fully answered the interrogatories herein mentioned by number, then answer each of interrogatories 14 through 18, both inclusive, 21, 24 and 38 as if the words "various employees of Calumet and Hecla Consolidated Copper Company at its plant in Decatur, Alabama" were substituted in lieu of the words "the Local Union" and in lieu of the words "the members of the Local Union" wherever said words occur in said interrogatories.

Answer 42. Defendant shows that no answer is required to this interrogatory.

43. Attach to your answers a full and complete list of the names of each and every member of your organization

who resided in or was employed in Morgan County, Alabama at any time between April 27, 1951 and September 25, 1951.

Answer 43. Defendant declines to answer this interrogatory for the reason that the information requested is irrelevant and immaterial to the issues now before the court.

44. During negotiations for a contract between the union and the company prior to the strike on July 18, 1951, did not Howard B. Hovis, Clyde P. Bradshaw, Olen B. Drake, Norman D. Ange and David H. Runager, or one or more of them purport to act and participate in the negotiations as a negotiating committee of the Local Union?

Answer 44. Howard B. Hovis, Clyde P. Bradshaw, Olen B. Drake, Norman D. Ange and David H. Runager were elected by the employees of Wolverine Tube, Decatur, Alabama Plant, members of this union, to act as a temporary negotiating committee for the bargaining unit until such time as a contract was obtained with the company, until the local union was organized, and until a permanent committee for the local union was elected.

[fol. 184] 45. Did not Michael Volk on or about September 25, 1951 tell a representative of The Decatur Daily that at a meeting of the membership of the Local Union the preceding night the members of the Local Union voted to terminate the strike, or substantially that?

Answer 45. Yes. Michael Volk in making substantially the statement mentioned was acting as International Representative of this union in charge of the strike at the plant, and as the officer in charge of dormant local union 68 which would have been established had a contract been obtained with the plant.

46. Did not Michael Volk on or about September 25, 1951 give a representative of The Decatur Daily a statement in part as follows:

"Our case was certified to the Wage Stabilization Board on Monday, September 24th, together with the Detroit plant.

"T. J. Starling, Atlanta, regional director UAW-CIO, telephoned me from the office of Walter Reuther in

Detroit. He informed me the plant here was vital to the war effort and that I should immediately call a meeting of the membership of Local 68 UAW-CIO and recommend that the strike be terminated. We met at seven o'clock Monday night at the CIO hall and they voted unanimously to terminate the strike.

"I called Mr. Oakes after the vote had been taken and informed him that our people were ready to return to work. The picket line was pulled at 8:30 last night."?

Answer 46. Yes.

47. Please attach to your answers a true and correct copy of the certification by the National Labor Relations Board of the bargaining agent for the employees of Calumet and Hecla Consolidated Copper Company (Wolverine Tube Division) at its Decatur, Alabama plant.

Answer 47. Copies of said Certifications are attached hereto, marked Exhibit "2", "3" and "4", and made a part hereof.

EXHIBIT "2"

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Case No. 10-RC-616

In the Matter of
CALUMET AND HECLA CONSOLIDATED COPPER COMPANY
(WOLVERINE TUBE DIVISION), Employer,
and
INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO,
Petitioner.

[fol. 185]

Case No. 10-RC-605

**CALUMET AND HECLA CONSOLIDATED COPPER COMPANY
(WOLVERINE TUBE DIVISION), Employer,
and**

**LOCAL 558, INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, AFL, Petitioner.**

Case No. 10-RC-651

**CALUMET AND HECLA CONSOLIDATED COPPER COMPANY
(WOLVERINE TUBE DIVISION), Employer,
and**

**UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF
THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED
STATES AND CANADA, LOCAL UNION NO. 760, Petitioner.**

SUPPLEMENTAL DECISION

ORDER

and

CERTIFICATION OF REPRESENTATION

Elections were conducted in the above matter pursuant to the Board's direction¹ and in accordance with the Rules and Regulations of the Board. It appears that the Tallies of Ballots that a collective bargaining representative has been selected in Voting Groups 2 and 4, and that no collective bargaining representative has been selected in Voting Groups 1, 3 and 5. No objections have been filed by any of the parties within the time provided therefor.

In the Decision and Director of Elections previously referred to, the Board made no final determination of the ap-

propriate unit or units, but stated that such determination would depend in part upon the results of the elections among the employees in the votint groups.

Upon the basis of the entire record in the cases, the Board makes the following:

Supplemental Findings of Fact

We find that each of the following groups of employees at the Decatur, Alabama, plant, of Calumet and Hecla Consolidated Copper Company (Wolverine Tube Division), excluding however, in each instance, all other employees, but specifically office and clerical employees, timekeepers, timestamp study employees; sales employees, watchmen, guards, nurses, engineers, draftsmen, and all other professional employees, confidential employees, management representative, and supervisors as defined in Section 2 (11) of the Act, as amended, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9 (b) of the Act, as amended.

1. All carpenters and millwrights including the tong and draw bench repair millwrights and millwright helpers; and

2. All electricians.

IT IS HEREBY ORDERED that the Petitions for Certification [fol. 186] of Representatives of employees filed by Petitioners herein, be, and they hereby are, dismissed insofar as they pertain to the employees in Voting Groups 1, 3 and 5.

Certification of Representatives

IT IS HEREBY CERTIFIED that the following organization has been designated and selected by a majority of the employees of the above-named employer, in the units hereinabove found by the Board to be appropriate in the section entitled "Supplemental Findings of Fact," as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the Act, as amended, the said organization is the exclusive representative of all such employees for the purposes of collective bargaining with respect to

rates of pay, wages, hours of employment, and other conditions of employment.

1. International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO has been designated and selected by a majority of all employees in Unit 1.

2. International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO has been designated and selected by a majority of all employees in Unit 2.

Signed at Washington, D. C., this 21st day of November, 1949.

James J. Reynolds, Jr.	Member
Abe Murdock	Member
J. Copeland Gray	Member
NATIONAL LABOR RELATIONS BOARD	

(SEAL)

D

EXHIBIT "3"

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Case No. 10-RC-1346

In the Matter of

CALUMET AND HECLA CONSOLIDATED COPPER COMPANY
(WOLVERINE TUBE DIVISION), Employer,

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO,
Petitioner.

Certification of Representatives

Pursuant to the terms and provision of the Agreement for Consent Election entered into by and between the parties in the above-entitled matter, the undersigned Regional Director of the National Labor Relations Board conducted an election by secret ballot as therein provided. No objections were filed to the Tally of Ballots furnished to the parties, or to the conduct of the election.

Pursuant to authority vested in the undersigned by Section 5 of the Agreement for Consent Election and by the National Labor Relations Board, it is hereby certified that a majority of the valid ballots has been cast for

[fol. 187] INTERNATIONAL UNION, UNITED AUTOMOBILE, AIR-CRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO

and that pursuant to Section 9 (a) of the National Labor Relations Act said organization is the exclusive representative of all the employees in the unit defined in the Agreement for Consent Election for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

Signed at Atlanta, Georgia this 4th day of May, 1951.

On Behalf of

NATIONAL LABOR RELATIONS BOARD

/s/ John C. Getreu, Regional Director for National Labor Relations Board.

EXHIBIT "4"**Case No. 10-CA-933****In the Matter of****CALUMET & HECLA CONSOLIDATED COPPER COMPANY
(WOLVERINE TUBE DIVISION)****and****INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, C.I.O.****Case No. 10-RC-616.****CALUMET AND HECLA CONSOLIDATED COPPER COMPANY
(WOLVERINE TUBE DIVISION), Employer,****and****INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO,
Petitioner.****Case No. 10-RC-605****CALUMET AND HECLA CONSOLIDATED COPPER COMPANY
(WOLVERINE TUBE DIVISION), Employer,****and****LOCAL 558, INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, AFL, Petitioner.**

Case No. 10-RC-651

CALUMET AND HECLA CONSOLIDATED COPPER COMPANY
(WOLVERINE TUBE DIVISION), Employer,

and

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF
THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED
STATES AND CANADA, LOCAL UNION NO. 760, Petitioner.

Case No. 10-RC-1346

CALUMET AND HECLA CONSOLIDATED COPPER COMPANY
(WOLVERINE TUBE DIVISION), Employer,

and

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO.

[fol. 188] ORDER VACATING DECISION AND ORDER.

and

GRANTING MOTION

On November 21, 1949, the Board issued a Supplemental Decision, Order and Certification of Representatives in Cases Nos. 10-RC-616, 10-RC-605 and 10-RC-651. On November 9, 1950, the Board issued a Decision and Order in Case No. 10-CA-933,¹ finding among other things, a violation of Section 8 (a) (5) of the Labor Management Relations Act of 1947. On May 4, 1951, the Regional Director issued a Certification of Representatives subsequent to an election conducted in Case No. 10-RC-1346 pursuant to a consent election agreement. Thereafter, on May 28, 1951, counsel for Calumet and Hecla Consolidated Copper Com-

¹ 92 NLRB No. 3

pany, Wolverine Tube Division, and International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C.I.O., filed a "Motion for Consolidation of Bargaining Units," requesting the Board to consolidate the units in the aforesaid certifications and certify the Union as the representative of all of the employees of all of said units. Counsel for the Company requested that enforcement proceedings be withdrawn.

The Board having duly considered the matter,

IT IS HEREBY ORDERED that the said motion of the Employer and the Union be, and it hereby is, granted; and,

IT IS FURTHER ORDERED that the aforesaid Decision and order of November 9, 1950, be, and it is hereby, vacated.

IT IS HEREBY CERTIFIED that International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, is the exclusive bargaining representative of all production and maintenance employees at the Decatur, Alabama, plant of Calumet and Hecla Consolidated Copper Company (Wolverine Tube Division), excluding office and clerical employees; time-keepers, time-study employees, sales employees, watchmen, guards, nurses, engineers, draftsmen and all other professional employees, confidential employees, management representatives and supervisors as defined in Section 2 (11) of the Act, for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.²

Dated, Washington, D. C., February 1, 1952.

By direction of the Board:

Louis R. Becker
Executive Secretary

48. What person or persons connected with your organization advised the National Labor Relations Board of the existence of the Local Union?

Answer 48. M. E. Duncan advised the National Labor Relations Board at the time this union petitioned for an

² This is not to be construed as a recertification.

election at the plant that there was no local union of this union then in existence which could act as bargaining representative for the employees of said plant, as is required by the rules and regulations of the National Labor Relations Board upon the filing of a Representation Petition by an International or National Union.

49. Is it not a fact that the representative of the International Union who made arrangements with the National Surety Corporation to execute bail bonds, as inquired about in Interrogatory 22, advised a representative of National [fol. 189] Surety Corporation of the existence of the Local Union, and also advised that M. E. Duncan and Michael Volk could be reached at the office of the Local Union and that its telephone number was 3352?

Answer 49. Defendant declines to answer this interrogatory for the reason that the information sought is irrelevant and immaterial to the issues now before the court.

50. Is it not a fact that the Local Union subscribed for telephone service in Decatur, Alabama, and that in July and August, 1951 its telephone number was 3352?

Answer 50. No. Michael Volk subscribed for telephone service as a representative of this union, listing the same as Local Union 68.

51. Is it not a fact that in June and July, 1951 the Local Union had an office at 618½ Second Avenue, in Decatur, Alabama?

Answer 51. No. This union had an office at the address mentioned.

52. Is it not a fact that M. E. Duncan wrote a letter to Wolverine Tube Division, Calumet and Hecla Consolidated Copper Company, Decatur, Alabama, to the attention of Mr. Frank W. Oakes, said letter being dated August 26, 1951, the first sentence of which was as follows: "The strike of Local 68, United Automobile Workers of America (CIO), has been in progress at your plant since July 18, 1951.;" and that the said M. E. Duncan signed said letter as Assistant Director, Region 8, UAW-CIO?

Answer 52. Yes, M. E. Duncan wrote said letter as representative of this union speaking figuratively of Local

Union 68, which would be organized upon the execution of a collective bargaining agreement with said plant.

53. Is the M. E. Duncan who wrote the letter inquired about in the preceding interrogatory the same M. E. Duncan who subscribed and swore to the allegations of the special appearance filed by Adair & Goldthwaite and Sherman Powell, as attorneys appearing specially in behalf of the Local Union?

Answer 53. Yes.

54. Is it not a fact that in June, 1951 M. E. Duncan, Assistant Director, Region 8, UAW-CIO, authorized the circulation of a notice reading as follows:

"Due to the management of Wolverine Tube Company, continuing to say *no* this is to notify all members of Local 68, UAW-CIO, that in accordance with the authority given your negotiating committee and representatives at a special meeting held Monday, June 18, 1951. We are calling a meeting for Thursday, June 28, 1951. For the purpose of taking a *strike vote, by secret ballot*. This meeting is for members only. Non-members may attend, by joining before the meeting and voting starts. All members are urged to attend and vote."

Answer 54. Yes.

[fol. 190] 55. Is the said M. E. Duncan who authorized the publishing and circulation of the notice inquired about in the preceding interrogatory the same M. E. Duncan who swore to the special appearance filed in behalf of the Local Union in this cause?

Answer 55. Yes.

56. Is it not a fact that during the negotiations between representatives of the International Union and representatives of Calumet and Hecla Consolidated Copper Company, representatives of the International Union submitted to the representatives of Calumet and Hecla Consolidated Copper Company draft of a proposed contract between that company and the International Union and the Local Union?

Answer 56. Yes.

57. State what representatives of the International Union presented said proposed contract to representatives of Calumet and Hecla Consolidated Copper Company, and who was present on that occasion.

Answer 57. M. E. Duncan presented said contract. A. H. Attaway and the temporary negotiating committee, hereinbefore named, were present. Michael Volk may have been present.

58. State all plans made by representatives of the International Union with reference to the formation of a local union in Decatur, Alabama, to be known as Local 68 of the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, and all that was done looking toward the formation of such local union.

Answer 58. In 1949 this union won an election in two smaller units of the Wolverine Tube Division, Decatur plant. This union undertook negotiations with the company and the company refused to recognize the union upon the ground that the units sought to be represented were inappropriate for the purposes of collective bargaining. Charters are issued by this union to local unions upon the application of persons eligible to membership in this union who desire to form a local union. In order for a local union to be fully established fifteen (15) or more persons eligible for membership in this union must apply for a charter to the General Executive Board of this union. The General Executive Board issues such charters. Upon the issuance of a charter a representative of this union will aid the charter applicants in establishing a local union. In order to establish a local union these persons desirous of forming the local union must vote to accept the charter, must become members of this union and accept its constitution and must elect their officers. It is the practice of this union [fol. 191] not to complete the establishment of a local union until a collective bargaining agreement is reached with an employer as a bargaining agreement is essential to the continued existence and functioning of a local union.

In December 1949 a charter was issued to employees of the Wolverine Tube Division, Decatur plant, as Local Union 68. Inasmuch as a contract was never executed with Wol-

verine Tube the charter was never formally accepted by the employees of that company who were members of this union and they never elected officers. In 1951 this union was certified as the bargaining representative of all production and maintenance employees of said plant and this union undertook to procure a contract for said collective bargaining unit, which efforts were unsuccessful. Subsequently, the charter was never accepted by said employees and no other steps were taken to establish a local union. The charter was at all times dormant and Local Union 68 was, so to speak, under the trusteeship of this union, all of the affairs of the potential local union being conducted by representatives of this union, a local union never having been completely established so that it had a legal existence as an entity existing apart from this union.

Mr. Wilkinson: We would like to move to exclude that part of the answer in which it is stated, in substance, that "a contract was essential to the continuance of a Local Union." That is not responsive to the interrogatory in the first place, and in the next place, it is an expression of the opinion of the witness, and invades the province of the jury.

Court: Overruled.

Mr. Wilkinson: We reserve an exception

59. Were applications for membership in said proposed local union taken, and, if so, attach copies of all such applications which were obtained.

Answer 59. Applications for membership in this union were accepted. Defendant declines to attach copies of all applications for the reason that the same are irrelevant and immaterial to the matters before the court.

60. State whether or not any sum or sums of money were collected from the persons who made such applications, and, if so, state what persons collected such funds and what persons took said applications and what persons made payments of the sums inquired about.

Answer 60. The information requested is irrelevant and immaterial to the issues now before the court.

[fol. 192] 61: Who made the selection of the persons

who purported to act as a negotiating committee for and in behalf of the Local Union?

Answer 61. Said persons were selected as a temporary negotiating committee for the collective bargaining unit by the employees of Wolverine Tube who were members of this union who were in attendance at said meeting.

62. What is the connection between the Congress of Industrial Organizations and the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C.I.O.?

62. Answer. This union is one of the International Unions and other organizations which are affiliated with the Congress of Industrial Organizations.

63. State whether or not International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C.I.O., is affiliated with the Congress of Industrial Organizations, and, if so, state whether or not said affiliation is evidenced by any written contract or agreement, and, if so, attach a true and correct copy of the same to your answers hereto.

Answer 63. Copy of the Certificate of Affiliation issued by the Congress of Industrial Organizations is attached hereto and made a part hereof, marked Exhibit "5".

STATE OF ALABAMA,)
MORGAN COUNTY.)

I hereby certify that the Certificate of Affiliation referred to above is signed by the President and Secretary of the Congress of Industrial Organizations and after diligent effort, I am unable to read the signature of the President as signed thereon and am therefore unable to copy same into the record in its true state; and I am this day placing said Certificate of Affiliation, with the Constitution (as attached thereto) (marked Exhibit "5" to the answers to interrogatories) in the hands of the Clerk, to be forwarded with this record.

This, August 24, 1953.

/s/ Sarah C. Dutton
Official Reporter

64. If said affiliation is not evidenced by written contract or agreement, then state in detail the terms and provisions of any oral contract or agreement or oral understanding between the two with reference to said affiliation.

Answer 64. This interrogatory requires no answer.

[fol. 193] 65. State whether or not the following persons were members of your organization in July and August, 1951, and, if some of said persons, but not all of them, were members of your organization, state which of them were such members: Howard Hovis, Clyde P. Bradshaw, Ralph Webster, Norman Cagle, James Ryan, Sherman Norris, Howard Lovell, David H. Runager, Olen B. Drake, Norman D. Ange, Fayne Peck, R. L. Mooney, Joe Clark, Aaron Julian, Theo Morris, Berth Craig, Olen Cooper, James Russell, Aaron Jones, Hoyt Anders, Mitchell Blackwood, Audrey Henderson, Moton Johnson, Melvin Breeding, Humphrey Breeding, Harold Payne, Harold Gandy, Weyman Gandy, Jack Jones, Shorty Manley, Carl Legg, Claude Brooks, Clarence Owens, Buford Cowley.

Answer 65. All persons named were members of this union.

(Answers Concluded as:

**INTERNATIONAL UNION, UNITED AUTOMOBILE,
AIRCRAFT AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, C.I.O.**

By /s/ M. E. Duncan

Assistant Regional Director, Region 8.

GEORGIA . . . FULTON COUNTY

PERSONALLY APPEARED before me, the undersigned officer authorized to administer oaths in and for the State of Georgia, M. E. DUNCAN, who after having been first duly sworn deposes and says that he is Assistant Regional Director, Region 8, of the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C.I.O., and is an agent and representative of said union, and is authorized to make this affidavit, and in said capacity he has knowledge of the facts set forth in

the above and foregoing interrogatory answers, and he deposes and says that the facts therein set forth are true.

/s/ M. E. Duncan

sworn to and subscribed before me
this the 15th day of October, 1952.

/s/ Mrs. S. A. Cheves, Jr.

Notary Public

(Seal)

Notary Public, Fulton County, Georgia
My Commission Expires August 10, 1954.

COURT ADJOURNED TO JUNE 5th.

JUNE 5, 1953, 8:30 A. M.

C. M. THORSEN, next witness for the plaintiff, being first duly sworn, testified:

Direct examination.

By Mr. Wilkinson:

Q. Will you give us your name for the record?

A. C. M. Thorsen.

Q. Are you a Captain of the Alabama Highway Patrol?

A. Yes, sir.

[fol. 194] Q. And how long have you been connected with the Highway Patrol?

A. Since December 1, 1931.

Q. And how long have you been a Captain?

A. Since December, 1947.

Q. Did you report to Decatur with a number of Highway Patrol on August 22, 1951 in the vicinity of the plant, of the copper plant, tubing plant?

Mr. Adair: I object to the question for the reason that the complaint in this case on behalf of the plaintiff claims he was deprived of the right to go in to work from July 18th to August 22nd. That means that the period of time covered

in this complaint is up until the time the Highway Patrol arrived in here on the 22nd and a day beyond that has nothing whatever to do with this cause of action and is immaterial in this case. As a matter of fact, the plaintiff has already testified that he went into the plant on the 22nd at 8 o'clock in the morning. There was no interference with him, and we believe that any testimony of what occurred on the 22nd could be used for nothing other than prejudicial purposes, and not pertinent to this case and would not show a typical situation with the rest of the time actually involved in this case. We know there were a lot of Highway Patrolmen out there and interested spectators from all over the country-side and we object to any testimony along that line.

Court: The evidence is that on the morning of the 22nd the plaintiff went in to work and at that time there were a number of Highway Patrolmen there. Overrule the objection.

Mr. Adair: We except.

Q. What time did you get out on Railroad Avenue in the vicinity of the entrance of the copper plant on that morning?

A. Approximately six o'clock A. M.

Q. And how long did you remain there that day?

A. We stayed out there until approximately eight o'clock P. M.

Q. Were you there from approximately 6 A. M. until 8 P. M.?

Mr. Adair: We don't want to keep interposing objections, but I would like to have a continuing objection to all questions and all testimony about anything on the day of August 22nd which we claim is outside of the complaint, and particularly object to anything after 8 A. M.

[fol. 195] Court: That is what he asked.

Mr. Adair: I would like a continuing objection to any testimony about the 22nd.

Court: Overruled.

Mr. Adair: We except.

Q. How many Highway Patrol did you have under you during that day, in your judgment?

A. I couldn't say exactly, but I brought fifty from out-

side the Decatur District and we had the Decatur District men there, too.

Q. And you had men here from the Decatur District, stationed at the Decatur Station?

A. Most of them.

Q. Most of them?

A. I would not be able to give you the exact number.

Q. In addition to the Decatur District, you had fifty from other districts?

A. Yes, sir.

Q. There were also police officers from the City of Decatur there?

A. Yes, sir.

Q. How many police officers were there; do you know?

A. I wouldn't say exactly, but I would say approximately eighteen or twenty.

Q. Eighteen or twenty?

A. Yes, sir.

Q. Were you there at the time a convoy of employees in automobiles approached the entrance to the plant somewhere in the neighborhood of eight o'clock, just before eight o'clock, on the morning of the 22nd?

A. Yes, sir.

Q. Do you recall approximately how many cars were in that convoy? What would be your best judgment as to the number?

A. I would say between seventy-five and a hundred.

Q. Automobiles?

A. Yes, sir.

Q. Would you tell the jury and the court what you did towards aiding those automobiles to get into the company property on that occasion?

Mr. Adair: I object; that calls for a conclusion.

Court: Sustained.

Q. Tell the jury what you did on that occasion while handling the situation.

[fol. 196] A. I deployed the men under my supervision up and down Railroad Street or Avenue. In other words, the access road to the plant, from a point where the plant property begins on that street westerly to approximately

one-half mile on both sides of the street, and when this convoy of automobiles came from the west going toward the plant, we allowed them to proceed on into the plant.

Q. Was a picket line across the highway at that point as the convoy approached?

A. Yes, sir.

Q. What did you do to get the men in the plant?

A. We just motioned, when the automobiles approached, motioned for the picket line to stand aside and motioned for the drivers to proceed ahead.

Q. Motioned the picket line to stand aside and for the drivers to go ahead?

A. Yes, sir.

Q. Did they come on through?

A. Yes, sir.

Q. The picket line open up?

A. Yes, sir.

Q. About how many were on the picket line on that occasion according to your best recollection?

A. Well, the number walking across the highway which I would call the picket line, I would say approximately twenty-five or twenty-eight men.

Q. How close together were they walking?

A. Very close.

Q. Would it have been impossible to have driven an automobile between the men on the line?

Mr. Adair: I object.

Court: Sustained.

Q. Was there interval enough between the pickets for an automobile to have passed?

Mr. Adair: Same objection.

Court: You can show how far apart they were, but I think that would be a conclusion.

Q. Give your best judgment as to the interval between the pickets.

A. I would not say there was any regular interval, but I would say approximately four or five feet between the men walking.

[fol. 197] Q. Possibly four or five feet. Was the picket line—how was the picket line walking?

A. They wasn't walking in a circle. More or less walking in an elliptical, oblong procession across the highway.

Q. Rotating around, back and forth?

A. Yes, sir.

Q. I will ask you if you have a film, a motion picture film that you have brought to court that contains a true representation of the scene at the picket line on the morning of August 22, 1951 from the time the picture was started until the convoy of workers arrived about 7:45 and entered the company property from Railroad Avenue?

A. Yes, sir.

Q. Have you seen that film projected and thrown on the screen?

A. Yes, sir.

Q. As a matter of fact, the Highway Patrol is using that film for instructional purposes?

Mr. Adair: I object to "using it for instructional purposes."

Court: Sustained.

Mr. Wilkinson: Reserve an exception.

Q. I will ask you whether you yourself have used it for instructional purposes?

Mr. Adair: We object.

Court: Sustained.

Mr. Wilkinson: Reserve an exception.

Q. I will ask you, Captain, if an exhibition of the film will show the scene at that time and place as you saw it on that occasion without exaggeration or minimizing the action photographed?

A. Yes, sir, it will actually show the location where the picket line was and where the automobiles were passing.

Q. Shows the same as you saw that morning?

A. Yes, sir.

Q. Before eight o'clock that morning, did you see any of the people at the picket line with clubs?

A. They had sticks, yes, sir.

Q. What size sticks?

A. Well approximately four or five feet long and about the size of a 1 x 2.

Q. Four or five feet long and about the size of a 1 x 2?

A. Yes, sir.

[fol. 198] Q. How many sticks of that kind did you observe as you recall?

A. I couldn't give you the exact number, but I would say approximately two-thirds of the men on the picket line had them.

Q. What did the others have, if anything?

A. You mean the bystanders?

Q. No, sir, the picket line.

A. Well, that is about all I saw that I could see were sticks.

Q. Did they have picket signs?

A. Yes, sir, some were carrying signs.

Q. Those who were carrying signs, have sticks?

A. I don't believe that the men that had signs had sticks.

Q. Men without signs had sticks?

A. Some of them, yes, sir.

Q. I will ask you this: Did you see any clubs among the bystanders?

Mr. Adair: We object.

Court: Overruled.

Mr. Adair: I would like to state my grounds: That among the bystanders, I think the testimony has already shown and certainly will show that there were numerous people out on that morning because of the uniqueness of 100 Highway Patrolmen coming into town, and unless it is shown that some of these defendants or somebody connected with them had whatever is being asked about, it is immaterial.

Court: I don't know how much will follow to connect it, but for the present I will overrule it.

Mr. Adair: We except.

A. There were a lot of people out there and naturally I couldn't see them all and I would not say definitely if I saw any bystander with a stick.

Q. Were people congregated on both sides of Railroad Avenue out here, the paved portion of Railroad Avenue?

A. Well, within a proximity of 50 to 75 or 100 feet of where the picket line was, the people were mostly on the

south side of Railroad Avenue. The officers were congregated mostly on the north side. West of that, there was quite a congregation on both sides.

Q. Captain, as this convoy of employees approached there about eight o'clock or just before eight, did you hear any shouts or yelling or remarks made as the convoy approached and was entering the plant property?

A. We didn't hear much shouting until the convey actually approached.

[fol. 199] Q. What did you hear when it approached?

A. Jeering, shouting, etc. as the cars passed through.

Q. What were they shouting?

A. Mostly the word "Seab".

Q. Mostly the word "Seab"?

A. Yes, sir.

Q. Anything else?

A. Well, I heard some of my men called very vile and obscene names by the people in the crowd.

Court: I didn't catch that Captain.

A. I heard some of my men called bad and obscene names.

That's all.

Cross examination.

By Mr. Adair:

Q. Captain Thorsen, you testified that there was a certain picture made on that occasion that would depict the condition as it existed?

A. Yes, sir.

Q. Who took that motion picture, Captain?

A. I don't know.

Q. You don't know who took it?

A. That's right.

Q. You familiar with motion picture cameras, Captain?

A. No, sir, not at all.

Q. Do you know they have got different shutter speeds; some slow motion and some show extra speed motions?

A. I am not acquainted with motion picture cameras or projectors either.

Q. You know where this camera was sitting that took this picture?

A. Not from my own knowledge. I have been told where it was.

Q. Isn't it a fact that you were furnished with this picture about this by the Wolverine Tube Company?

A. The Department of Public Safety was.

Q. It was furnished by Mr. Harris, counsel for plaintiff there?

A. No, sir.

Q. Furnished by Wolverine Tube Company?

A. Yes, sir.

Q. And did you know it was being made at the time it was being made?

A. No, sir.

[fol. 200] Q. Do you know of your own knowledge whether it was made after eight A. M. and on the rest of the day?

A. I couldn't say definitely.

Q. You couldn't say whether it was after or before eight A. M.?

A. No, sir.

Q. It wasn't made under your supervision, was it?

A. No, sir.

Re-direct examination.

By Mr. Wilkinson:

Q. You know that the convoy of employees got there shortly before eight o'clock, don't you?

A. You mean arrived at the entrance to the plant?

Q. Yes, sir,

A. Yes, sir.

Q. You have seen this picture projected on the screen a number of times?

A. Yes, sir.

Q. You know it shows what took place up to that time?

A. Yes, sir, it shows right at the picket line, where it was.

Mr. Wilkinson: We offer the film in connection with this witness' testimony, that is, the portion of it up to the time the convoy arrived on the company property.

Mr. Adair: We object to the introduction of the film. As a matter of fact, we have some authorities that we

would like to cite, and argue the proposition if you have any question about it, outside of the presence of the jury.

Court: Mr. Bailiff, take the jury out.

Jury is removed from Court room.

(Point is argued to the Court)

Court: It is the ruling of the court that the film has not yet been properly identified.

Mr. Wilkinson: We ask leave of the court to give further evidence.

Court: Bring the jury back.

MR. C. M. THORSEN, is called to the stand for further questioning:

Court: Gentlemen, the Annotator here states it so accurately and so much better than my thoughts were at the time I made them, I am going to read the annotation: "The following is essential: (1) Evidence should be introduced showing the technical qualifications of the operator of the projector, a detailed description of the projector and its mechanism should be shown by the evidence, the method of projection or exhibition, the speed at which the picture will be shown. A showing should be made that the exhibition of the picture to the jury will not exaggerate or minimize the actions of the object photographed, and that the projection or exhibition of the pictures to the jury will correctly show the object as photographed, in reference to the actions and speed of the object. (2) The operator of the projector should examine the film before he undertakes to exhibit it to the jury for the purpose of ascertaining whether there have been any deletions or additions to the film, and for the further purpose of determining whether or not the film can be projected at the same rate of speed (number of frames per second) at which the picture was taken, and that the picture correctly portrays the object and shows the conditions as they existed at the time the picture was taken, and that it can be exhibited without any distortion or misrepresentation. (3) In exhibiting motion pictures to the jury, it is possible to have the projecting device stopped at a given point for the purpose of

additional examination of a witness, or for additional cross examination of the witness, to explain the picture, if such evidence is competent.

Mr. Wilkinson: We call the witness to meet those conditions.

Q. I will ask you, Captain, if the film in that box you hold in your hand is the film, were you referring to that film a moment ago when I asked you some questions about the film?

A. Yes, sir.

Q. Will you leave that film on the Reporter's table.

Mr. Wilkinson: With that additional question, we reoffer the film.

Mr. Adair: (To witness Thorsen) Is that film a copy or is that the original?

A. My information is this is a copy of the original.

Mr. Adair: We object to it further on that ground.

Court: Sustained.

Mr. Wilkinson: We reserve an exception.

[fol. 202] WILLIAM D. SCHELBE, next witness for the plaintiff, being duly sworn, testified:

Direct examination.

By Mr. Harris.

Q. Mr. Schelbe, how do you spell your last name?

A. S-c-h-e-l-b-e.

Q. Schelbe?

A. Yes, sir.

Q. Your first name is William D.?

A. William David; yes, sir.

Q. You live in Decatur?

A. I live just outside of Decatur.

Q. How long have you lived here, Mr. Schelbe?

A. Five years.

Q. By whom are you employed?

A. Wolverine Tube Division.

Q. Were you employed by the Wolverine Tube Division on July 18, 1951?

A. Yes, sir, I was.

Q. And had been for some time prior to that?

A. Yes, sir.

Q. Mr. Schelbe, do you recall that there was a strike at Wolverine Tube that began on July 18, 1951?

A. Yes, sir, I do.

Q. When was the first time that you had heard or anyone had told you or you had received information otherwise there was going to be a strike at the Wolverine Tube that morning?

Mr. Adair: That's immaterial, it seems to me.

Court: This witness, as far as I know, is not involved in the case. I don't know what he does yet.

Q. What was your official position with Wolverine Tube?

A. Purchasing Agent.

Q. Purchasing Agent?

A. Yes, sir.

Q. Did you go to the plant just east of Decatur on that morning?

A. I did.

Q. What time did you go to the plant?

A. I would say it was about 7:40 A. M.

Q. About 7:40 A. M.?

A. Correct.

[fol. 203] Q. Anyone with you?

A. My wife and young son.

Q. Your wife and your son?

A. Correct.

Q. How old was your son?

A. My son was not quite four at that time.

Q. Not quite four?

A. Right.

Q. How did you go to the plant?

A. In my automobile.

Q. Over what street did you go as you approached the plant?

A. I believe it was Railroad Avenue. Is that the correct name?

Q. Railroad Avenue?

A. Correct.

Q. As you traveled down Railroad Avenue, did anyone stop you?

A. Just as I passed the railroad spur at the bend, I was stopped.

Q. By whom?

A. The one man I can positively identify as stopping me was Ralph Webster.

Q. Ralph Webster?

A. Yes, sir.

Q. Any persons with him?

A. There was a group with him.

Q. How many?

A. I would say at least six.

Q. How did they stop you?

A. Webster stood in front of my car, held up his hand and asked me to stop.

Q. I will ask you if prior to that time anyone had told you there was going to be a strike at the Wolverine Plant that morning?

A. It was a complete surprise to me as I rounded the bend and saw the picket line.

Q. You had no information prior to that?

A. I had none whatsoever.

Q. What happened when they stopped you?

A. I was stopped, and I believe it was Webster came around to the side of my car, together with three or four, and asked me for my card.

Q. What sort of card?

A. That's what I asked. I didn't know what he meant. "What card do *to* you mean?"

[fol. 204] Q. What did he say?

A. "You know what card I mean." He finally got it across to me that he was asking for my management card.

Q. Your identification card?

A. Yes, sir.

Q. Had the company issued identification cards to the salaried employees?

A. Yes, sir. It shows the name and has a picture on it, and certified I was a management employee of the Wolverine Tube.

Q. An employee and part of the management?

A. That's right.

Q. What did you tell him?

A. I told him I didn't have to show my card. The only man who had a right to ask for my card was the watchman at the gate.

Q. You told him that the only man who had a right to ask for your card was the watchman at the gate?

A. Yes, sir.

Q. What happened then?

A. More conversation followed and I still refused to show my card, and we engaged in conversation I will say for two minutes, and I attempted to point out the fact I was on a public highway and on a public street and no one had a right to stop me in a public street and ask for my management identification card.

Mr. Adair: I object to any conclusion being stated by the witness. I don't object to facts.

Court: Alright.

Q. Did you state it was a public highway and you had a right to travel it?

A. That was my main objection to being stopped.

Q. Then what happened?

A. Another man took his place at the side of my car and placed his hand on the windshield of my car. First of all, let me go back. When I asked why I was required to show my I.D. card, the statement was made they wanted to find out who I was and whether I was really a management employee. That seemed ridiculous to me.

Court: Don't tell how it appeared; just tell what they said.

Q. They told you they wanted to know whether or not you were part of the management department?

[fol. 205] A. That's right, and wanted to identify me personally.

Q. You say another individual came up and put his hands on the car?

A. That's right.

Q. What did he do?

Mr. Adair: I object unless it is shown who the individual was, or make some identification.

Q. Was he there with the group that stopped you?

A. Yes, sir.

Mr. Adair: We object.

Court: Being out-of-state lawyers, you may be more familiar with it than I am, but unless you state your grounds of objection, if error was committed, it probably would not be reversed because of that, and you are authorized to state any ground that you have.

Mr. Adair: In connection with that, my ground of objection is that it does not connect the defendants or any of them with the statement being made.

Court: Overruled.

Mr. Adair: We except.

A. He had his hands on the side of my car and I refused—my wife was becoming extremely nervous and upset and my wife was fairly shouting, "Show your I.D. card and let's get out of here!"

Q. Before that did this individual do anything to your car?

A. Yes, sir, he had his hand on my car and I believe the exact words he used were: "Schelbe, we'd certainly hate to have your car be the first one we turned over."

Q. "Schelbe, we would certainly hate to have your car be the first one we turned over"?

A. Yes, sir.

Q. Was he shaking your car or doing anything?

Mr. Adair: I object to his leading.

Q. I withdraw that. What did he do?

Mr. Adair: I object on the same grounds; he's already told the witness—he said "shaking".

Court: Overruled.

Mr. Adair: We except.

A. Actually I couldn't say that he shook the car. The [fol. 206] car is heavy, and it is kindly impossible to feel it shaken when the motor is running, so I only saw he had his hands on the windshield of my car. My wife was very

upset and was shouting, "Show your card and let's be on our way!"

Q. What did you do then?

A. Because of her insistence that I do that—after the threat was made that my car would possibly be the first one turned over, I didn't want my wife and little boy hurt—had I been by myself I might have stayed all day.

Q. What did you do then?

A. I showed the card and they waved me on my way, and I proceeded on into the plant.

Q. You showed the card and they waved you on in?

A. Yes, sir.

Q. As you got up closer to the plant, did you see the picket line?

A. I did.

Q. Did you stop there or did you go through without stopping?

A. I proceeded from the point originally stopped right into the plant very slowly.

That's all.

Cross examination.

By Mr. Adair:

Q. Mr. Schelbe, how do you spell that?

A. S-c-h-e-l-b-e.

Q. Where are you from, Mr. Shelbe?

A. I was born and raised in Detroit, Michigan.

Q. Did you come down when Wolverine came in?

A. Yes, sir, I was transferred from the Detroit organization to Decatur.

Q. Mr. Schelbe, you say you are the Purchasing Agent?

A. That's correct. I am Purchasing Agent.

Q. This card that you had—do hourly paid employees have cards like that?

A. They do not.

Q. Could we see that card?

A. Yes, sir. (Getting card out of bill fold).

Q. Is that the card you are speaking of?

A. That is the card.

Q. This card on the front states, "This is to certify that William D. Schelbe is management representative of Wolverine Tube Division. /s/ Frank W. Oakes. Is that correct?

A. That is correct.

Q. On the back side, it has your picture, your identification, and your signature, does it not?

A. Right.

Q. I would like to show this to the jury and then return it to Mr. Schelbe. Now, Mr. Schelbe, in addition to what I read off the card, I failed to ask you whether or not a number is shown right under the picture, and that number is between two and four thousand, being #3,151?

A. That's correct.

Q. Is that your number?

A. That is my official badge number at Wolverine Tube Division.

Q. Mr. Schelbe, did your wife and child go on into the plant with you?

A. Yes, sir, they did. They went into the office building with me, as far as the office building.

Q. And they returned—went home?

A. That's correct.

Q. After you got in the plant, were you told about the agreement between the company and the union, that management representatives would show the card and be admitted?

Mr. Wilkinson: We object as not being material, incompetent, irrelevant.

Court: Overruled.

Mr. Wilkinson: We except.

A. Yes, I was informed that that was the agreement.

Q. That was by some official of the company?

Mr. Wilkinson: Same objection on the same ground.

Court: Overruled.

Mr. Wilkinson: We except.

A. Yes, sir.

Q. Who?

Mr. Wilkinson: Same objection.

Court: Overruled.

Mr. Wilkinson: Except,

A. Mr. Oakes.

Q. Will you state that a little louder?

A. Mr. Oakes informed me if I was asked to show my card, I should show it.

Q. And that thereafter you did show your card and you went into the plant?

[fol. 208] A. I was never asked after that time.

Q. They knew you then?

A. They knew me that time.

Court: Question was, "They knew you then"?

A. Yes, sir.

Q. Mr. Schelbe, you didn't appreciate being stopped at all?

A. No, sir, I didn't.

Q. You felt pretty bitter about it?

A. Yes, sir.

Q. You still feel pretty bitter?

A. I do, sir.

Q. Who is Mr. Oakes?

A. Mr. Oakes' title is—let me make sure I call it correctly—I believe his correct title is Manager of Public and Industrial Relations.

Q. At that time, the time the question I am asking about, did he have that title; was he Manager of Plant and Public Relations in charge of all personnel?

A. I believe so, yes, sir.

Q. Mr. Schelbe, you stated that the gentlemen who stopped you and asked about the card, was Mr. Ralph Webster. Is that the gentleman you are talking about?

A. Yes, sir.

Q. Where is he?

A. (Indicating) The man sitting at the end of the table.

Q. We have in evidence as plaintiff's Exhibit "2" a photograph which gives you a picture of Railroad Avenue running from your left, which is the west, to your right, which is east, and into the plant.

A. That is correct.

Q. You familiar with that avenue and that territory?

A. Very much so.

Q. These two fountain pen marks just beyond the railroad were put there by the plaintiff to show where the picket line was (indicating).

A. Correct.

Q. Is that where it was?

A. That is not where I was stopped.

Q. I am trying to develop facts, Mr. Schelbe, and not trying to trap you. Just tell the truth—

[fol. 209] Mr. Wilkinson: We object to the comment of counsel and ask that it be excluded and instruct the court that remarks of counsel are not evidence and not to consider them.

Court: Mr. Witness, listen to the question, and answer the question. Don't inject anything but the answer to the question.

Witness: Alright.

Q. I asked you if the point as being marked as being the picket line, if that was where the picket line was?

A. Yes, sir.

Q. Do you happen to know where the company property line is there, Mr. Schelbe?

A. I assume it is right where the sign is.

Q. I am not asking for an assumption and move that the assumption be stricken out.

Court: That is out.

Q. Do you have any definite knowledge where the company property is?

A. I can't say I do.

Q. I will ask you if this shubbery, three little bushes to the west of the sign—is that on company property?

A. I don't know,

Q. You don't know?

A. I don't know.

Q. In other words, you don't know where the line is?

A. I am not sure; no, sir.

Q. You stated that when you came to the picket line you proceeded on through and nobody stopped you there?

A. That's right.

- Q. When you showed your card, you went on through?
A. That is correct.

Re-direct examination.

By Mr. Harris:

- Q. When was that identification card issued to you?
A. I believe it was shortly after I was permanently located in Decatur.
Q. When was that?
A. In April, 1948.
Q. So at the time of this strike, you had had your card over three years?
A. This particular card "no", because I see by the date [fol. 210] on this card, the card was printed in April, 1951.
Q. You had a card previously?
A. I had a similar card.
Q. That one was issued in April, 1951?
A. It was printed in April, 1951 which indicates it was issued to me some time after April, 1951.
Q. How long had you known Ralph Webster on that occasion?
A. I would say I could have identified him at least a year previous to that date.
Q. Had you seen him from time to time and he seen you?
A. Yes, sir.
Q. Ever talked to him before?
A. I believe I may have had a casual hello to him.

That's all.

ROBERT L. McGREGOR, next witness for the plaintiff, being first duly sworn, testified:

Direct examination.

By Mr. Harris:

- Q. Please state your name to the jury.
A. Robert L. McGregor.
Q. Where do you live, Mr. McGregor?

A. In Decatur.

Q. How long have you lived here?

A. Five year.

Q. By whom are you employed?

A. Wolverine Tube Division.

Q. Have you been employed by that concern ever since you have been here?

A. Yes, I have.

Q. Mr. McGregor, what is your occupation?

A. I am an industrial engineering supervisor.

Q. Industrial engineering supervisor?

A. Yes, sir.

Q. Did you take a course in industrial engineering at any school or college?

A. Yes.

Q. What college did you attend?

A. Lawrence Institute of Technology, Detroit.

[fol. 211] Q. How many years did that course require?

A. Three years.

Q. Is photography a part of that course?

A. Yes, it is.

Q. Both still pictures and moving pictures?

A. Yes.

Q. Tell the jury what experience you have had in both taking and projecting moving pictures.

A. Well, I have had approximately seven years of experience in both taking and projecting motion pictures. We made a film at Calumet, Michigan, the first colored film in an underground mine in the country. It was of feature length, 1600 feet, and had a sound track on it and was shown quite widely across the country. Since that time we have made a film of the Decatur plant, and we have made two films dealing with industrial engineering subjects: "Introduction to Work Simplification" and "Ratio Delay Study" dealing with tools, both of those used by industrial engineering consultants and people like that, showing how work can be improved.

Q. Do those pictures reproduce the action of men working and machines?

A. Yes, they do, and in our industrial engineering work, they have to in order to time them accurately.

Q. Are you familiar with the various cameras used in taking motion pictures?

A. I am familiar with those we have used.

Q. Are you familiar with projectors used in projecting moving pictures?

A. Yes, I am.

Q. Mr. McGregor, do you recall the occasion of the strike at Wolverine Tube in July or August, 1951?

A. Yes, I do.

Q. Do you recall the day that the plant reopened on August 22, 1951?

A. Yes, sir.

Q. Did you, on that morning of that day, take a moving picture of any location near that plant?

A. Yes, sir, I photographed the entrance to the plant.

Q. You photographed the entrance to the plant?

A. Yes, sir.

Q. That is, you took a moving picture of the scenery and of the activities around it?

A. That is correct.

[fol. 212] Q. You know where Railroad Avenue enters the company property at approximately where that railroad crossing is and where the sign is, do you, which is at the end of the public street?

A. Yes, sir.

Q. Is that the locality you photographed on that occasion?

A. It was.

Q. State to the jury where your camera was located at the time you photographed that area.

A. The camera was located on the roof of the gate house building, we call it. The first building on the plant property.

Q. The first building on the plant property, and how far is that, approximately, from the area which was photographed?

A. I would judge 100 yards.

Q. I show you a photograph which has been offered in evidence here as plaintiff's Exhibit "2" and ask you to look at that and see if you see what you refer to as the gate house?

A. Yes, sir (indicating), this building right here.

Q. I will ask you to mark that with an arrow pointing down toward the building, showing it pointing to the roof of the building.

A. (Witness marks arrow).

Q. Is that where you were when you took that picture?

A. Yes, it was.

(Mr. Harris shows picture to the jury).

Court: The camera was on top of that building?

Witness: Yes, sir.

Q. Explain to the jury the kind of camera used in taking that picture, and about the mechanism.

A. The camera was an Eastman Kodak Special we purchased in 1950. We used one inch, three inch and six inch lenses with it, and used battery operated, electrical drive.

Q. Is that type of camera and that type equipment in general and standard use?

A. Yes, sir, both by advance amateurs and semi-professional people.

Q. What type of film did you use?

A. Eastman Kodak super xx reversible.

Q. Is that a good quality film?

A. Yes, it is.

Q. At what speed, that is, frames per second, did you run that camera?

A. At 16 frames per second.

[fol. 213] Q. 16 frames per second. Is that the proper speed to truly depict the object being photographed?

A. Yes, sir, it is.

Q. Describe the objects that you photographed on that morning, whether persons or things, or just what it was you photographed.

A. I photographed the people that were located in the general area of Railroad Avenue and the railroad track.

Q. Did your camera photograph everything that appeared within the range covered by it or the area covered by it?

A. Yes, sir, it did.

Q. After you took that picture there on the roof that morning, what is the proper procedure with reference to the film that you had? Is it developed?

A. No, it is exposed but not developed. It is sealed in cans and sent to the Eastman Kodak Laboratory. That film is returned, the film we call the original. We put it together and have a print made, and we keep the original stored in a cool, dry place.

Q. Can many prints be made of one film?

A. Yes, many prints can be made.

Q. Are these identical with the film from which they are made?

A. Yes, they are.

Q. In the motion picture industry, for example, they shoot the scenery with the camera and then make a hundred films from that, do they not?

A. That's correct.

Q. Which are run all over the country, and that is the same procedure used here?

A. That is right.

Q. Right there, did you make memoranda of the day and times they were photographed?

A. Yes, I kept a notebook and recorded such information.

Q. And did you photograph them on the film?

A. Yes, I did.

Q. To show the various intervals of the film and show the time of day?

A. That is correct.

Q. Is that correct?

A. Yes, sir.

Q. And when it is projected, it will project that time of day preceding what took place at that time?

[fol. 214] A. That is correct.

Q. Have you projected that film after its development?

A. I have.

Q. Were there any deletions or additions in it, or was it as you took it?

A. It was as I photographed it.

Q. Have you this morning and just before you took this witness stand examined the film which is located on this machine on this desk where I am sitting and exhibited it?

A. I did.

Q. Is that a true and correct photograph of the picture you took that morning?

A. That is a true copy of the original film.

Q. Does it depict the scenery exactly as you took it and the objects?

A. Yes, it does.

Mr. Harris: Now, at this point, if your Honor please, we offer the film in evidence.

Mr. Adair: I would like to have the witness.

Mr. Harris: I am not through with the witness.

Mr. Adair: I would like to have the witness on voir dire.

Mr. Harris: Let me finish then with my examination of him on the technical points.

Q. Mr. McGregor, I believe you stated you have also had experience in projecting pictures?

A. Yes, I have on many occasions.

Q. Made the same study and had the same experience as in taking the picture or shooting the scenes?

A. Yes, sir.

Q. Give the jury a detailed description—I will ask you what this machine sitting on this table is on which that film is rigged up.

A. It is a Bell & Howell sixteen millimeter sound motion picture projector.

Q. That gives the name. Give me just the description of the projector and its mechanism.

A. The projector operates on A.C. or D.C. 110 volts. It has a—

Q. Is that the standard voltage we have in Decatur?

A. Yes, sir.

Q. And every where else?

A. Practically. It has a synchronized motor that drives [fol. 215] three synchronized sprockets interlocked with gears. The film is carried through an aperture and in front of the projection lamp. The lamp shines a light through the film and through a condensing lamp and is projected to the film screen. It has two reels there. The take-up reel and top reel, we call it, where the film is threaded through the machine and on to the take-up reel. I could cover the sound system but since this is a silent film—

Q. This is a silent film?

A. Yes, sir.

Q. Although this machine has a sound system contri-

vance or gadget on it, those have nothing to do with the silent films?

A. No, sir, we cut out that portion on the machine.

Q. It would have nothing to do with the film when you cut it out?

A. No, sir.

Q. At what speed can this projector project that film?

A. Two speeds, silent and sound.

Q. I mean in frames per second?

A. 16 or 24.

Q. It will project at two speeds?

A. Yes, sir.

Q. You, as operator, can select the speed?

A. That is correct.

Q. With that machine, can you project this film at a speed of 16 frames per second?

A. Yes.

Q. That is the same speed at which you shot the film?

A. Yes, sir.

Q. Is that the proper speed to use in projecting this film so as to truly portray what you photographed?

A. Yes.

Q. Will an exhibition of this picture or film to the jury either exaggerate or minimize the action of the objects photographed?

A. No, sir.

Q. Will it correctly show the object as photographed in reference to the action and speeds of the objects?

A. Repeat that.

Q. Will a projection or exhibition of this film to the jury show the objects as they were photographed in reference to the actions and speeds of those objects or persons?

A. Yes, they will.

[fol. 216] Court: Suppose it shows a automobile which is going at the rate of ten miles per hour. Will the speed that it exhibits it show that same movement in miles per hour or will it make it go faster or slower?

A. It will make it go exactly the same.

Q. Have you exhibited this film immediately before you took the stand in this case to determine whether or not there have been any deletions or additions to the film and

for the purpose of determining whether it can be projected at the same rate of speed, that is, the number of frames per second at which it was taken, by the use of this projector?

A. Yes, sir. It is identical with the original and it can be projected at the same speed the original was taken.

Court: And as set, will do that?

A. Yes, sir.

Q. And will that projection correctly portray the objects and show the conditions as they existed at the time it was taken, and can it be exhibited without any distortion or misrepresentation?

A. It can be.

Q. In exhibiting that motion picture, is it possible for you to have the projection device stopped at a given point?

A. Yes, it is.

Mr. Harris: At this point, we offer the film in evidence with the request that Mr. McGregor be allowed to exhibit the film to the court and jury, that portion of it in line with your Honor's ruling up to the time this plaintiff entered his place of employment.

Mr. Adair: Before making a formal objection, I would like to have the witness on voir dire.

VOIR DIRE

By Mr. Adair:

Q. Mr. McGregor, you say you lived and went to college in Detroit to learn engineering?

A. That is right.

Q. Did you take up this photography as a hobby or did you actually study it in school?

A. It was necessary to study it.

Q. You did so study it?

A. Yes, sir.

Q. You stated you supervised the making of a film up in Calumet, Michigan, I believe?

[fol. 217] A. I didn't supervise it; I participated in it.

Q. One of the workers in connection with it?

A. That is correct.

Q. That was a colored film, was it not?

A. Yes, sir.

Q. Showed the plants in operation up there?

A. Yes, sir.

Q. A similar film was made at the Decatur plant?

A. That is right.

Q. Just what part did you play in the taking of that film?

A. I supervised that film and photographed most of it.

Q. What do you mean "supervised"?

A. It takes a team of three or four people to make a picture of that scope. One for lighting, someone to run the camera, etc.

Q. How many does it take to make an ordinary black and white picture, outdoors?

A. One person can do it outdoors.

Q. On this film made of the Decatur plant—not the one in question—one of the operation, did you operate the camera yourself on that?

A. Yes, I operated the camera.

Q. When you have shot your picture of the objects, just how do you go about getting it developed?

A. As soon as the taking is finished, we have to take it—if we are using Eastman Kodak film, we sent it to their laboratory.

Q. You don't have anything to do with the developing yourself?

A. No, we don't.

Q. Suppose when you send that film to the Eastman Kodak Company—was that at Rochester, New York?

A. We sent ours to the Chicago laboratory.

Q. Sent it to Chicago to develop it. Suppose you got some blank spots in there, in other words, in some malfunctioning of the film or the operator made some mistake in shooting and there is nothing on there. What do you do with that?

A. We cut that out if that happens.

Q. They cut it out or do you cut it?

A. We cut it.

Q. Did they develop everything you sent?

A. They developed the whole length of film and sent it back to us.

Q. What they sent back is the original film?

[fol. 218] A. That is correct.

Q. This original film can be shown in the same manner a copy can?

A. Right.

Q. You have the original, do you?

A. I don't have it in my possession, no.

Q. When this original film got back (on this that you took on this 22nd day of August when the plant reopened, the film you took that morning), when it came back from Chicago, just who received it?

A. I did.

Q. What did you do with it?

A. We took—it was in several reels—and took the reels and spliced them together.

Q. Did you do what you commonly term "editing" of the film? Did you do the editing at that time or at a later time?

A. We did the editing as soon as the film was ready.

Q. What did you do? Take scissors and clip it out?

A. It depends. In this case, we merely cut the heads and tails off, the part that doesn't have a picture on it, the part you start threading, and cut them off and fastened them together.

Q. You didn't cut any out in editing, any exposure at all? I would like for you to think carefully about that.

A. We didn't cut any photographs out of the original film.

Q. Did anybody else do any cutting besides you?

A. No.

Q. You sure of that?

A. I am sure that no one else did any cutting besides me.

Q. You sure you didn't?

A. I cut the heads and tails off.

Q. But other than the heads and tails?

A. I had to splice in the titles.

Q. You have added titles to it?

A. Yes, sir.

Q. What are those titles like? Time of day?

A. That's right.

Q. You have put the time of day into the copy after you made the picture?

A. That's right.

Q. I have further questions to ask the witness, but I have asked all necessary for me to object to the introduction at this time. There have been additions made to the [fol. 219] film, even deletions in the first place, and in the second place, it is a copy rather than the original. On those grounds, we object.

Mr. Wilkinson: What is the difference between this and the original you spoke of, if there is any difference?

Witness: Between this and the original? None whatever.

Mr. Wilkinson: Like a carbon copy of a typewriter?

Witness: Yes, sir.

Court: Overruled.

Mr. Adair: We except.

Q. Do you know where the original of this film is?

A. I think I do. I gave it to Mr. Oakes, and I presume he still has it.

Q. Who is Mr. Oakes?

A. Industrial and Public Relations Manager.

Q. Is he in Decatur, Alabama?

A. Yes, he is.

Q. Does he work at Wolverine Tube?

A. Yes, he does.

Q. So far as you know, does he still have possession of this original?

A. I suppose he does.

Q. When you make a splice on the original and, as you testified, put headings or sub-titles in there with the time of day when the picture was taken, you put that in the film after it was photographed?

A. Yes, sir.

Q. When it got back from Chicago?

A. Yes, sir.

Q. So you had to cut the original to put the insertions in?

A. In some cases it was cut; in some we merely fastened the heading to one of the tails.

Q. But you did have to make some changes from the way it came back from Chicago?

A. We made those additions to it.

Q. This copy—that is the smooth copy that is photographed from the changed original, is it not?

A. Correct.

Q. That doesn't show any spliced places or cuts, does it?

A. It would not be detectable to someone viewing it.

Q. So actually on a copy one would never know there have been deletions or additions?

[fol. 220] A. I could tell.

Q. Did you make this copy yourself?

A. No. Eastman Kodak.

Q. What did you do? Send the original back after putting the various things in it, and you let them make a copy of it?

A. That is right.

Q. Do you recall about what time of day you started taking this picture?

A. The time of day we started taking the picture?

Q. Yes, sir.

A. About 5:15.

Q. You do this all by yourself? You said one man could do it.

A. I had a fellow helping me carry the equipment up to the gate house, etc.

Q. Who was he?

A. Paul Blackwell.

Q. Who ran the camera first, you or Blackwell?

A. I ran it first.

Q. Then Blackwell relieved you and ran it a while?

A. Not on the first day; I ran it by myself.

Q. You sure of that?

A. The best I can remember.

Q. Isn't it a fact that about six o'clock, Blackwell took over and ran the camera for a while?

Mr. Harris: We object to arguing with the witness.

Court: He asked if that wasn't a fact. Overruled.

- A. I don't recall anyone other than me on the first day.
Q. Blackwell did it at a later time?
A. Not the first day to my recollection.
Q. How much film does one of these cameras hold? How long can you run without having to stop?
A. Approximately 3½ minutes.
Q. So every 3½ minutes, you have a break in the continuity and have to reload the camera?
A. We used two chambers and they were interchangeable.
Q. How long a break would there be in the picture?
A. 15 or 20 seconds.
Q. Ever three minutes there would be 15 or 20 seconds [fol. 221] break. As I understand, you just took pictures as there was activity out there, people coming in, and when another group would come, you take it again?
A. That's correct.

Mr. Adair: I object to the introduction of this movie at this time on the ground that by the witness' own testimony, it is not a complete representation of what happened that morning, but it is a selected picture. It was started and stopped, picked and chosen what he wanted to take pictures of. Certain incidents were taken, then he would stop, and then run again, and under the rule cited in Corpus Juris, one of those requirements is that it has to be complete in its details without any distortions of the period covered. This film could not give a true representation as this man picked and chose certain things, and did not run at other times. Certainly by so doing, that will create an impression which would not be accurate as to what actually happened throughout the time involved. I would like to renew my objection on the ground that this film is a copy and it has not been shown that the original is out of the state. It has not been shown that the original has been destroyed or otherwise unavailable, and the original would be the highest and best evidence. This witness admitted this original has been cut with scissors and various remarks spliced into this copy.

Mr. Wilkinson: Would you agree that this original and copy may be exhibited, and if there is no difference, there is no merit in your objection?

Mr. Adair: I will not. I will move that it not be admitted in evidence.

Court: The best understanding I have is that a moving picture is a series of still pictures and the fact that it may be still for just a brief time—it has to be still long enough to take it. Of course, there has to be an interval in there between them. Overrule the objection.

Mr. Adair: We except.

Mr. Adair: If I understood the witness correctly, it wasn't just a question of fixing the film when he stopped, but he picked and selected things he took pictures of.

Court: I understood he stopped for 15 seconds in between each take.

[fol. 222] Mr. Adair: No, sir, he stated that he only took what he wanted to take when he would see somebody coming or some particular activity he wanted to take, and stopped and waited before he took it again. This is not a complete portrayal of what happened out there. That is one of the grounds of objection.

Mr. Wilkinson: But saying that each witness is on the scene for five minutes, he can tell what he saw during that five minutes.

Court: I think that goes to the weight rather than the admissibility. In other words, if the jury could feel like he was selecting the events that he was taking and not portraying others, they could consider that in determining just what weight they will give the evidence.

Jury is removed, so that counsel for defendants might have opportunity to first see the film and make any objections before the Jury see it.

Picture is shown in absence of jury.

Mr. Adair: We object to that, your Honor, "Reopening of the plant, strike bound since July 18." "Strike bound", that is an adjective, or maybe it's an adverb, but I know it's a coloration of what it represents on that day.

Court: (To projectionist) Don't show that when the jury is in here.

Mr. Adair: (After continuation of film) The plaintiff claims he went to work at 15 minutes until 8. This part started at "7:46". This whole business since the last no-
ice is after 7:46. He didn't say exactly what time he went

in, but he said he was the fourth car that went in. About 50 or 75 ears have now gone through and it would be our opinion that you have gone further than necessary to show the jury.

Court: If he says he went in in the fourth car, don't show any of the picture after the fourth car goes in.

Mr. Adair: On behalf of the defendants, we object to the introduction of this film into evidence for the reason that it unduly emphasizes the evidence, for the reason that it singles out particular evidence on one day of a thirty-day period involved, and that it does not contain a true representation of the true state of facts in existence on the other days involved.

We object on the further ground that it portrays a situation [fol. 223] on August 22nd, which date, in fact, is outside the events and claims made in the complaint, in that, the plaintiff claims he was prevented from working from July 18th, 1951 to August 22nd.

Further, it is immaterial, in that, the plaintiff has admitted in his testimony that he went to work on the day of August 22nd and got in without interference. We feel that the introduction of this movie would have the effect of arousing the sympathy of and prejudice of the jury rather than throwing any real light on the issue involved. We also object to it on the ground that the movie plainly would confuse, rather than to aid the jury on the real issue involved, and, further, that it would tend to distract the jury's attention from the main issue involved.

In addition, we object on the ground that it is secondary evidence, not showing that the original is out of the state or that it could not be brought in here and used, and we, of course, renew the other objections already had in the record.

Court: It is the thought of the court that all evidence with reference to the happenings is admissible during that period of the transaction as referred to in some of the cases; and the court fixes the transaction as beginning as of the morning of July 18th and ending when this man entered the plant on August 22nd.

Court: Overruled.

Mr. Adair: We reserve an exception.

Mr. Wilkinson: Your Honor holds that that portion of the convoy up to and including the fourth car in which plaintiff was riding may be exhibited but nothing subsequent to that. We reserve an exception to the ruling, as we see that as part of the res gestae. We object, but we do not offer anything beyond that.

Jury is brought back and the picture is shown to the jury.

Mr. Adair: As I understand, the fourth car of the caravan containing Mr. Russell has already gone in.

Court: (Indicating picture) This is the caravan just going in.

(After fourth car passes, picture is cut off.)

State of Alabama,)
Morgan County.)

I hereby certify that the motion picture offered in evidence by the plaintiff as Exhibit "10" to the testimony of [fol. 224] Robert McGregor, being a motion picture, is of such nature that it can not be copied into the record; that I have this day placed said exhibit in the hands of the Clerk to be forwarded with the record in this case.

Witness my hand, this August 24, 1953.

Sarah C. Dutton, Official Reporter.

No Further Direct

No Further Cross

JERRY B. COMER, next witness for the plaintiff, being first duly sworn testified as follows:

Direct examination.

By Mr. Harris:

Q. Where do you live?

A. 1513 Chestnut Southeast, Decatur.

Q. How long have you been in Decatur?

A. Five years.

Q. You employed by the Wolverine Tube Division?

A. Yes, sir.

Q. Were you on July 18, 1951?

A. Yes, sir.

Q. Did you go to the plant of that company to work on that morning?

A. Yes, I did.

Q. About what time did you approach the location of the plant?

A. Approximately fifteen until eight.

Q. As you approached there, did you see Paul Russell's car anywhere?

A. Yes, sir, it was—I had to slow down, of course, for the number of people, and I noticed his automobile ahead of me and on the right hand side of the street.

Q. Ahead of you and on the right hand side of the street? That would be going into the plant?

A. Going into the plant.

Q. Was anyone around his car?

A. Yes, sir, there was a great number of people around it.

Q. Do you have any judgment as to the number of people who were around his car?

A. I would estimate 30 or 40 people.

Q. In that, are you including what we call the pickets; those that were walking in the circle across the street?

[fol. 225] A. No, I am not including those.

Q. Did you see any pickets there?

A. Yes, sir, they were there.

Q. What were they doing?

A. They were walking back and forth across the street in a circle carrying signs, having the street blocked.

Q. State whether or not anyone flagged you down or motioned you down.

A. Yes, sir, an individual flagged me down and stopped me.

Q. Who was it?

A. Mike Volk.

Q. Michael Volk?

A. Yes, sir.

Q. With what organization was he connected?

Mr. Adair: I object, unless it is shown he has reason to know.

Q. Is that the same person as Michael Volk?

A. Yes, sir.

Q. Do you know him?

A. Yes, sir.

Q. Was he an official of the United Automobile Workers?

A. To my knowledge.

Q. Did Mr. Volk have anything to say to you?

A. Yes, sir.

Q. What did he say?

A. He asked me if I was salaried or hourly.

Q. He asked you if you were salaried or hourly?

A. Yes, sir.

Q. What did you tell him?

A. I told him salaried.

Q. What did he say then?

A. He said that was o. k., and then proceeded to make motion toward the picket line and yelled to the picket line it was o.k. for this car to pass through.

Q. What did the pickets do when Volk yelled that?

A. They opened sufficiently for me to pass on through.

Q. As you passed on through, where was Paul Russell's car?

A. Paul Russell's car was on the right hand side of the street stopped.

Q. Had it moved while you were being passed through?

A. No, it had not.

Q. Which side of the street did Mr. Volk wave you through on?

[fol. 226] A. Well, I was passed through on the left hand side of the street completely over on the shoulder.

Q. And Paul Russell was on the right hand side of the street?

A. Yes, sir.

Q. When you left your home that morning to go to work, did you go straight to work?

A. Yes, sir.

Q. How far is your home from there?

A. I would estimate it better than a mile.

Q. When you left home that morning, had anyone told you there was going to be a strike that morning?

A. No.

Q. Had you received such information from any source whatever?

A. No, I had not.

Cross examination.

By Mr. Adair:

Q. Your name "Comer"?

A. Yes, sir.

Q. What is your job, Mr. Comer?

A. Training supervisor.

Q. What kind of training is that?

A. My job duties include supervision of various training programs carried on in most all industrial plants.

Q. What kind of training?

A. It may include on the job training, supervisory training, economies training, various other types.

Q. You a school teacher, more or less?

Mr. Harris: We object and ask counsel not to use a term like that to the witness. The witness is entitled to respect.

Mr. Adair: Your Honor, I don't mean anything. There is no more respectable individual in the State of Alabama than our school teachers.

Mr. Harris: I misunderstood your term. I apologize.

Mr. Adair: Your apology is accepted.

A. My work might be applied to a teacher's work.

Q. Who were your students?

A. We don't have students particularly. All employees of the Wolverine plant might be in a training program.

Q. In such a training program, you would instruct or teach them, is that correct?

[fol. 227] A. Not necessarily. Most anyone in the organization might serve as an instructor.

Q. Is that instruction how to do the job?

A. That is one field of industrial training.

Q. What are some other fields?

A. Your other fields might be in the field of supervision, executive development, understudies.

Q. You may teach how to be an executive?

A. We attempt to teach them how to improve their executive abilities.

Q. You are an executive, are you?

A. No.

Q. You are not?

A. No.

Q. Mr. Comer, are you a native of this part of the country, or did you come here with the plant from Detroit?

A. I was employed for this plant.

Q. Where did you come here from?

A. I am from Kansas.

Q. You were a radio announcer out in Kansas?

A. No.

Q. Ever worked as a radio announcer?

A. I have helped out with local stations, yes.

Q. You state that when you came up to the picket line on the morning of July 18, 1951, that you were asked whether or not you were hourly or salaried; is that right?

A. Right.

Q. And you answered "salaried". Is that correct?

A. Yes, sir.

Q. Whereupon, Mr. Volk, you stated, waved you in. Is that correct?

A. Yes, sir.

Q. You proceeded and went into the plant, did you not?

A. That is right.

Q. Now, did you show your identification card or were you asked to show it on that occasion?

A. No, I don't believe so.

Q. Were you later asked to show it?

A. Yes.

Q. That was standard procedure to show that, to see [fol. 228] whether or not you were a management employee, after the 18th?

A. I was asked at the picket line, yes, sir.

Q. That is what I mean. As a matter of fact, Mr. Oakes instructed you to show it, did he not?

A. I would say that Mr. Oakes asked us to; yes.

Q. Who is Mr. Oakes?

Q. He is our Manager of Industrial and Public Relations.

Q. Did he tell you they would show it—the salaried employees—and could come in the plant?

A. No, I don't believe he ever made that statement.

Q. Who did tell you that he had made an agreement with the union that you would show this card? Did he not?

A. No, he didn't make that statement to me.

Q. He didn't make that statement to you?

A. No.

Q. When you went across the picket line, will you show us just where your car was on this photograph, plaintiff's Exhibit 2, which shows Railroad Avenue, the left hand side of the picture being west, the right hand side of the picture being east. There are two inked cross marks there right beyond the railroad. The plaintiff marked that (Mr. Russell) as showing where the picket line was. Is that also where you remember the picket line was on that morning?

A. That is the general vicinity, yes.

Q. Will you show us, in relation to that picket line, where you went through the picket line and into the plant?

A. I was asked to stop on the north side of the road. That is where I was stopped, and proceeded on the north side of that road, this left hand lane (indicating on picture).

Q. In the left hand lane?

A. Yes, sir.

Q. As you crossed through the picket line, where was your car?

A. My car was clear off on the shoulder here and barely on to the road.

Court; You say "clear off on the shoulder here". Tell the jury where that is.

A. The shoulder is on the north side there.

Q. Mark on this picture the extreme left hand side of your car where your left wheels would have been off the road as you went through.

[fol. 229] A. (Witness indicating) Right along there.

Q. You indicated that by making a straight line at the left hand side of the road just at the railroad tracks, did you not?

A. That is right.

Q. Mr. Witness, where you made that mark there, is it true that your left wheels would have had to come up on the railroad rail to come past at that point?

A. Very close to that edge.

Q. Do you know whether that where the pavement ends down left of the road there is a drop of at least a foot where the railroad rails come up into the pavement?

A. No, I don't believe so. There is a slight drop off.

Q. You remember your car going over the rails, exposed rails?

A. Yes, it did.

Q. How tall were they?

A. Two or three inches.

Q. The rails you are speaking of there were up in the pavement, were they not?

A. There is a gravel shoulder there.

Q. Mr. Comer, have you been here in attendance at this trial since it opened?

A. I have been in the court house, yes.

Q. As a matter of fact, you have been calling Mr. Russell's witnesses for him, have you not?

Mr. Harris: If the court please, counsel for plaintiff and for defendants and the court had an agreement, for the convenience of the Wolverine Tube Division and their employees, that this witness would be stationed here and call the witnesses as needed, and we don't think that is a fair aspersion to cast on the witness.

Mr. Adair: We don't mean to cast aspersions, and if that is the way counsel feels, we withdraw the question.

Mr. Harris: We want the record to show the situation.

Mr. Adair: I withdraw the question.

Q. After the 18th, you did go in every day during the strike?

A. That is right.

Q. You showed your pass and went on in to work?

A. When it was called for.

Q. Sometimes it was not called for?

[fol. 230] A. That is right.

Re-direct examination.

By Mr. Harris:

We would like for Mr. Comer to be excused from the rule and allow him to remain in the court room so we can more conveniently give him the names.

Noon, June 5th.

MR. A. M. HUSKEY, next witness for the plaintiff, being first duly sworn, testified:

Direct examination.

By Mr. Harris:

- Q. Your name is A. M. Huskey?
- A. Yes, sir.
- Q. Where do you live, Mr. Huskey?
- A. At Hartselle.
- Q. How long have you lived there?
- A. Moved in and bought there in 1937.
- Q. Before that did you live out east of Hartselle?
- A. Yes, sir.
- Q. You have lived in this county a good long time?
- A. All my life.
- Q. On July 18, 1951, where were you working?
- A. At Wolverine.
- Q. In Decatur? That the copper plant?
- A. Yes, sir.
- Q. What shift were you on?
- A. First shift.
- Q. Is that from eight in the morning until four in the afternoon?
- A. Yes, sir.
- Q. Did you leave your home to go to work on that morning?
- A. Yes, sir.
- Q. How did you proceed to work? Did you go in your car?
- A. I went in my car.

- Q. Was anybody with you, Mr. Huskey?
- A. There was three of us.
- Q. Who were they? Do you remember?
- A. M. D. Whitworth, Dock Jones, Millard Green.
- Q. They all work at Wolverine?
- A. Yes, sir.
- Q. Did you have your lunch with you?
- [fol. 231] A. Yes, sir.
- Q. Did you approach the plant that morning about your usual time?
- A. I left about the usual time.
- Q. As you came up Railroad Avenue, did you see a congregation of people up there?
- A. Yes, sir.
- Q. Did you see Paul Russell's car anywhere? If so, where?
- A. There was a car down at the end of it, and they said it was Paul Russell's.
- Q. Was it a maroon Ford?
- A. Yes, sir.
- Q. Did you see Paul in it?
- A. Yes, he was in it.
- Q. Was that right there where the picket line was walking in a circle?
- A. Yes, sir.
- Q. Did you hear anybody, either in the picket line or on the side of the road, cry out anything while that car was there?
- A. I wasn't down close to the car, but I heard hollering going on; I don't know who was saying it or what.
- Q. What was they hollering?
- A. I heard somebody say, "Turn him over."
- Q. Did you get into work that morning?
- A. No, sir.

No cross examination.

CLIFFORD CARNELL, next witness for the plaintiff, being first duly sworn, testified:

Direct examination.

By Mr. Harris:

Q. You are Mr. Clifford Carnell?

A. Yes, sir.

Q. Where do you live?

A. 1101 Tenth Avenue Southeast.

Q. Have you lived in this county most of your life?

A. Yes, sir.

Q. On July 18, 1951, where were you employed?

A. Wolverine Tube Division.

Q. Were you an hourly paid employee?

[fol. 232] A. Yes, sir.

Q. On that day, did you leave home to go to work?

A. Yes, sir.

Q. About what time?

A. About 15 until seven.

Q. Did you approach the plant on that morning going over Railroad Avenue?

A. I didn't get there.

Q. You didn't get there? Did you get as far as Railroad Avenue?

A. Yes, sir.

Q. Were you with anybody?

A. Yes, sir.

Q. Who?

A. Daly Teague, Herb Lee.

Q. You, Teague and Lee, and who else?

A. Albert Collum.

Q. Did they work there, too?

A. Yes, sir.

Q. All of you worked on the first shift?

A. Yes, sir.

Q. All of you hourly paid employees?

A. Yes, sir.

Q. You go in an automobile?

A. Yes, sir.

Q. As you drove down Railroad Avenue, did you see any crowd there?

A. Yes, sir.

Q. Before you got there that morning, had anyone told you there was going to be a strike there that morning?

A. Not until after we come through Hartsville, Herb Lee said he believed they would throw up a picket line; "that it will be a picket line when we get there."

Q. He said that he believed there would be a picket line there when you got there?

A. Yes, sir.

Q. That was the first you heard?

A. Yes, sir.

Q. You went on anyway?

A. Yes, sir.

Q. Did all of you have your lunches with you?

[fol. 233] A. I had my lunch and Daly Teague.

Q. You and Teague?

A. Yes, sir.

Q. What about Lee and Collum?

A. They didn't have their lunch.

Q. They didn't have their lunch?

A. No, sir.

Q. Did you get into work that morning?

A. No, sir.

Q. How close to the picket line did you get, I mean where the men were walking across the street in a circle?

A. I got in about sixty or seventy feet of it.

Q. Did you see a car down there on the highway headed toward the plant?

A. Yes, sir.

Q. You know whose it was?

A. Paul Russell's.

Q. Did you see him in it?

A. Yes, sir.

Q. Did you hear anybody cry out anything while that car was sitting there?

A. Yes, sir.

Q. What did you hear?

A. "Turn him over."

Q. Do you know where that came from?

A. No, sir, I don't.

Cross examination.

By Mr. Adair:

Q. I believe you said Mr. Teague and Mr. Lee was in the car with you at that time?

A. Yes, sir.

Q. And Mr. Collum was in the car—A. J. Collum? Was it "Collum"?

A. Yes, sir.

Q. You know whether or not he was the fellow out of Hartselle who works as a painter now or not?

A. I don't know whether he is a painter now or not.

Q. You know whether it was A. J. Collum?

A. No, sir, I don't know his initials.

Q. You say neither Lee nor Collum had their lunch?
[fol. 234] A. No, sir.

Q. They told you as you came through there, there would be a picket line out there?

A. Lee did.

Q. So you did know when you came through Hartselle there would be a picket line?

A. Yes, sir.

Q. Mr. Carnell, you were an hourly paid worker?

A. That's right.

Q. Not a salaried employee?

A. No, sir.

Q. And you say you heard somebody say "Turn him over" while Russell was sitting there?

A. Yes, sir.

Q. You know whether or not it was one of these defendants that said that?

A. No, sir, I don't.

Q. You know who said it?

A. No, sir.

Q. Did you see anybody try to turn him over?

A. There was a bunch got around the car.

Q. But did you see anybody turn him over or try to turn him over?

A. No, sir.

Re-direct examination.

By Mr. Harris:

Q. Was Lee a member of the union?

A. Yes, sir.

Q. Was Collum?

A. I don't know.

Q. You don't know whether he was or not?

A. No, sir.

MR. KENNETH JOHNSON, next witness for the plaintiff, being first duly sworn, testified:

Direct examination.

By Mr. Harris:

Q. Mr. Johnson, you live in Morgan County?

A. Yes, sir.

[fol. 235] Q. How long have you lived here?

A. All of my life.

Q. On July 18, 1951, where were you working?

A. Wolverine.

Q. Were you an hourly paid employee?

A. Yes, sir.

Q. Were you working on the first shift?

A. Yes, sir.

Q. Did you leave home that morning to go to work?

A. Yes, sir.

Q. Who was with you?

A. Riley Leg and Talmadge Long.

Q. When you left home that morning, did you have your lunch with you?

A. Yes, sir.

Q. When you left home, had anyone told you or had you heard anywhere there was going to be a strike and a picket line at that plant that morning?

A. No, sir.

Q. When you drove up Riverview Avenue toward the plant, did you see a gathering of men there?

A. Yes, sir.

- Q. Was there a picket line?
 A. Yes, sir.
 Q. Did you see Paul Russell's car stopped there?
 A. I seen a car.
 Q. You don't know whose it was?
 A. He was sitting in it.
 Q. You saw him in it?
 A. Yes, sir.
 Q. Did you hear anybody cry out anything while his car was sitting there?
 A. I heard "turn it over".
 Q. Did you get into work?
 A. No, sir.
 Q. I mean Railroad Avenue is the street you all drove out on?
 A. I don't know the name.
 Q. On the street leading to the plant?
 A. Yes, sir.
 Q. That is the one you went over?
 A. Yes, sir.

[fol. 236] Cross examination.

By Mr. Adair:

- Q. You don't know who made that outcry?
 A. No, sir.
 Q. Lot of folks out there that morning?
 A. Yes, sir.
 Q. Did you see women and children out there, too?
 A. No, I don't recall any women that first morning.
 Q. See people on both sides of the road?
 A. Yes, sir.
 Q. Mr. Johnson, you were told when you arrived at the plant that it was closed to all except the salaried employees?
 A. No, sir.
 Q. Anybody tell you that?
 A. No.
 Q. Did you later learn that?
 A. Yes, sir. Didn't anybody tell me that.
 Q. Did you later learn that? What is your answer?
 A. Didn't no hourly men go in.

Q. You know whether or not the plant was closed to hourly men?

A. They went in—the salaried men went in.

Q. Was the plant closed to hourly people after that?

A. Yes, sir.

Q. Did you sign a petition asking the plant to reopen?

A. Yes, sir.

Q. Who brought it to you?

A. Carlos Thomas.

Q. What did he tell you the purpose of it was?

Mr. Harris: We object; illegal, immaterial.

Court: Overruled.

Mr. Harris: We except.

Q. How did he explain it to you?

A. He asked if I wanted to sign to go back to work. I told him I did.

Q. Do you remember what it said?

A. No.

Q. What the petition said?

A. No, I didn't read it.

Q. You don't know whether or not it had language in there requesting that the company reopen?

[fol. 237] A. No, I couldn't say. I don't know.

Q. You just signed it?

A. Yes, sir.

Q. He didn't explain it any further?

A. No.

Q. On August 22nd was that the day the plant reopened as you remember?

A. I think so.

Q. Did you go to work the first day it reopened?

A. Yes, sir.

Q. Did you go to work every day as long as the strike went on?

A. No.

Court: How long did you continue after August?

Witness: How long was I out?

Court: How long did you continue to work after August 22nd?

Witness: I'm still working.

Q. As long as there was a picket line, you continued to go to work every day after August 22nd?

A. Yes, sir.

Q. You still working?

A. Yes, sir.

Re-direct examination.

By Mr. Harris:

Q. Did you work between July 18th and August 22nd?

A. No, sir.

Q. Do you know whether the picket line was there all that time?

A. There was.

Q. Did you go out there any more?

A. No, sir.

Q. You heard there was a picket line out there?

Mr. Adair: I object to leading.

Court: Of course, that would be hearsay.

MR. G. W. PEPPER, next witness for the plaintiff, being first duly sworn, testified:

Direct examination.

By Mr. Harris:

Q. Mr. Pepper, where do you live?

A. Limestone County; Athens.

Q. Been over there a good many years?

[fol. 238] A. Yes, sir.

Q. On July 18, 1951, where were you working?

A. Wolverine.

Q. Did you leave home that morning to go to work?

A. Yes, sir.

Q. Anybody go with you?

A. Yes.

Q. Who?

A. Harold Whitmire and Richardson.

Q. Did all three of you work on the first shift?

A. Yes, sir.

Q. They worked at Wolverine, too?

A. Yes, sir.

Q. When you left home that morning, did you have your lunch with you?

A. Right.

Q. Do you remember whether Mr. Richardson and Mr. Whitworth had their lunch?

A. They had theirs.

Q. Was that "Whitworth" or "Whitmire"?

A. Whitmire.

Q. And they had their lunch, too?

A. Yes, sir.

Q. As you approached the plant that morning on the street that leads up to it, did you see a gathering?

A. Yes, sir.

Q. Did you see a car down close to where some men were walking in a circle across the street?

A. Yes, sir.

Q. Did you see who was in the car?

A. Yes, sir.

Q. Who?

A. Paul Russell.

Q. Tell the jury whether there was anybody around that car, and if so, whether or not you heard anybody cry out anything?

A. There was a gang around, but I remember somebody hollering out "Turn him over".

Q. Did you get in to work that morning?

A. No.

[fol. 239] Cross examination.

By Mr. Adair:

Q. You say that the men around Mr. Russell were yelling "Turn him over"?

A. Yes.

Q. You remember that?

A. Yes.

Q. You were looking at them?

A. Yes. "Let's turn him over."

Q. Right around his ear?

A. Had a hold of his ear.

Q. The man that had a hold said, "Turn him over"?

A. Several had a hold of his car.

Q. One of them hollered, "Turn him over"? Is that correct?

A. Yes.

Q. You sure of that?

A. Right.

Q. If I told you Russell testified that some unidentified person yelled "Turn him over" way away from his car, what would you say?

Mr. Harris: We object to arguing with the witness. Mr. Russell didn't testify to that.

Court: Sustained.

Q. Mr. Pepper, you went out with Mr. Whitmire and Mr. Richardson?

A. Yes.

Q. You heard this person who had a hold of the car say "turn him over"?

A. I didn't say no person said "turn him over".

Q. Didn't you say one person had hold of his car?

A. I said several had a hold and yelled.

Q. Who yelled?

A. I didn't say who it was.

Q. The person that yelled did have a hold of his car?

A. Yes.

Q. You sure of that?

A. Yes.

Q. Did you see any other cars stopped out there?

A. Yes.

Q. Hear any other yells?

[fol. 240] A. Not out in the picket line. I didn't see no more cars.

Q. You didn't hear any more yells?

A. No, sir.

Q. You know Russell personally?

A. I just knew him before the strike.

Q. Have you talked with anybody about your testimony in this case?

A. No.

Q. Haven't talked to anybody?

A. No.

Q. You didn't talk to the lawyer about what you were going to testify?

A. Yes, he asked me.

Q. Who was that?

A. Mr. Harris.

Q. Talk to anybody back in that room a few minutes ago about your testimony (indicating witness room)?

A. No.

Q. The man who was with you there in the car, was that Joseph E. Richardson?

A. That's right.

Q. You know whether or not Joseph E. Richardson is also suing the defendants and this International Union with a suit just like Russell's?

A. No.

Q. Has he talked to you about the suit?

A. No.

Q. Did you sign a petition to get the company to reopen?

A. Yes, sir.

Q. Who brought it to you?

A. There was Carlos Thomas and Loyd Bond.

Q. How did they explain it to you?

A. They just said it was a petition to get enough to sign the petition that the company would reopen the gate just like we come out.

Q. That was what they said?

A. If we would get enough to operate the first shift.

Re-direct examination.

By Mr. Harris:

Q. Before you got to where you could see that gathering down there near the plant, had anyone told you there was going to be a strike and a picket line there that morning? [fol. 241] A. No, sir.

Q. You didn't know that when you left home?

A. No, sir.

Q. And didn't know it until you got there?

A. That's right.

M. D. WHITWORTH, next witness for the plaintiff, being first duly sworn, testified:

Direct examination.

By Mr. Harris:

Q. Mr. Whitworth, where do you live?

A. Hartselle, Alabama.

Q. How long have you lived in this county?

A. Some twenty years.

Q. On July 18, 1951 did you work at the copper plant—on July 18, 1951, which is the day the strike began, did you work at the copper plant here in Decatur?

A. I was employed by Wolverine Company.

Q. On the first shift?

A. Yes, sir.

Q. Did you leave home that morning to go to work?

A. Yes, sir.

Q. Did you take your lunch when you left home?

A. Yes, sir.

Q. Did anybody go to work with you that morning?

A. I was in the car with other boys.

Q. Who were they?

A. It was Fitzgerald's car. I don't remember the other boys.

Q. How many of you were there?

A. Four the best I remember.

Q. They all worked at the plant, too?

A. Yes, sir.

Q. Worked on the first shift?

A. Yes, sir.

Q. Do you remember whether or not they had their lunches with them?

A. Generally, they did. I couldn't swear on that morning whether they did. Generally, they carried their lunch.

Q. They left there to go to work?

A. Yes, sir.

[fol. 242] Q. As you approached the plant on the street leading up to it, did you see a crowd of people?

A. Yes, sir.

Q. Before that time, had you heard or anyone told you that there was going to be a strike and a picket line that morning?

A. There had been a rumor of it.

Q. And there had been rumors of strikes for sometime?

A. Yes, sir.

Q. How long had that been rumored?

A. I couldn't say exactly.

Q. Been over a period of two or three weeks back of that?

A. I would be afraid to say for sure.

Q. Been a good many rumors there was going to be a strike?

A. They had been rumors.

Q. Had you heard that that was the day of the strike; anybody told you a strike was going to be called that day?

A. That was the last rumor I heard.

Q. When did you hear that?

A. The evening before.

Q. Do you remember who told you that?

A. Not for sure.

Q. Was it some employee that you worked with?

A. Yes.

Q. Did you get into the plant that morning?

A. No, sir.

Q. After you got there, what did you do?

A. We went up to where the picket line was and stayed a few minutes and went back.

Q. Did you see a car stopped up there on the street?

A. Yes, I saw a car.

Q. You know who was in it?

A. Yes.

Q. Who was in the car?

A. Paul Russell.

Q. What did you see or hear while you were up there somewhere near the car?

A. I wasn't paying too much attention. I heard a good bit. To be sure of anything, I wouldn't say.

Q. Did you hear anybody cry out?

[fol. 243] Mr. Adair: I object to leading the witness.

Mr. Harris: I am not leading the witness.

Mr. Adair: My only point is the witness said he didn't remember anything he heard.

Q. Did you hear anyone near there cry out anything, and if so, what?

Mr. Adair: Same objection. He said he didn't hear anything. Now counsel is leading.

Court: Overruled.

Mr. Adair: Reserve an exception.

A. Well, I heard someone say that he was a scab and turn his car over.

Q. Someone said he was a scab and turn his car over?

A. Yes, sir.

Cross examination.

By Mr. Adair:

Q. Who did you hear say that?

A. I couldn't say.

Q. Where was the person standing that said that?

A. Well, I couldn't say that.

Q. Was the person that said it standing alongside Russell's car?

A. Yes, sir.

Q. You sure of that?

A. I wouldn't say for sure. It was about two or three hundred people out there and I wouldn't say where it come from.

Q. Gathered all around there?

A. Yes, sir.

Q. You don't think it was right at the ear that it was said?

A. I couldn't say.

Q. You don't know where it came from?

A. No.

Q. Mr. Whitworth, did you sign the petition asking the company to reopen the gates?

A. Yes.

Q. Who brought it to you?

A. I don't remember.

Q. You don't remember who brought it?

A. No, sir.

Q. You remember what was told you about what was the purpose of the petition?

[fol. 244] A. Yes, I remember.

Q. What did they say the purpose was?

A. To get back to work; to get the plant to reopen and get back to work.

Q. To get the plant to reopen and get back to work?

A. Yes, sir.

Q. After you signed the petition and after the plant did reopen, which was on the 22nd of August, did you go in on that day?

A. Yes, sir.

Q. Did you continue to work thereafter?

A. Yes, sir.

L. H. Barnes, next witness for the plaintiff, being first duly sworn, testified:

Direct examination.

By Mr. Harris:

Q. Your name is Loyd H. Barnes?

A. Yes, sir.

Q. Where do you live, Mr. Barnes?

A. Austinville.

Q. How long have you lived in this county?

A. About five years.

Q. On July 18, 1951, which was the date the strike began at Wolverine, where were you employed?

A. At Wolverine.

Q. Were you an hourly paid employee?

A. Yes, sir.

Q. What shift were you working?

A. First shift.

Q. On that date, did you leave home to go to work?

A. I did.

Q. Was anybody going with you when you went to go to work?

- A. No, sir.
- Q. By yourself?
- A. Yes, sir.
- Q. Driving your car?
- A. Yes, sir.
- Q. When you left home that morning, had anyone told you there was going to be a strike and a picket line out there on that morning?
- [fol. 245]. A. No, sir.
- Q. When you approached the plant, did you see a congregation of people there?
- A. I did.
- Q. What did you do?
- A. I pulled over and parked.
- Q. Did anybody wave you down or say anything to you?
- A. I don't remember.
- Q. After you parked, what did you do?
- A. I got out and went up closer.
- Q. Closer to what?
- A. To the line.
- Q. By the line, tell the jury what you mean.
- A. Where they were walking with the signs.
- Q. Where they were walking?
- A. Between the public street and the Wolverine property about on the line.
- Q. Pretty near the line?
- A. Yes, sir.
- Q. Were they walking on the paved street?
- A. Yes, sir.
- Q. Kindly in a round and round motion?
- A. Round and round in a circle.
- Q. You got any judgment about how many there were?
- A. I don't know; maybe fifteen or twenty.
- Q. Did you see a car stopped on the street down there just west of where they were walking?
- A. There was one parked about where they were walking.
- Q. You know who was in the car?
- A. No, sir.
- Q. You do not?
- A. No, sir, I don't.
- Q. How near that did you get?

A. I would say thirty steps.

Q. From there?

A. Yes, sir.

Q. Did you hear anybody cry out anything while down there, and if so, tell the jury what you heard.

A. There was some hollering "turn him over", but I don't know who it was.

[fol. 246] Q. Somebody said "turn him over", but you don't know who it was?

A. No, sir.

Cross examination.

By Mr. Adair:

Q. Mr. Barnes, did you see anybody try to turn the car over?

A. No, sir.

Q. Did you sign the petition to the company to try to get it to reopen the gates?

A. Yes, sir.

Q. Do you remember who brought that petition to you?

A. No, I don't know.

Q. You don't remember?

A. No. I think I was about the third one that signed it.

Q. Was the purpose of that petition to get the company to reopen the gates to resume operations?

A. I think so.

Q. Did they advertise in the newspaper they would reopen?

A. I don't think so; they did reopen. I don't know.

Q. Did you get a letter through the mail telling you they were going to reopen?

A. I got a letter through the mail to come back to work when it did open at a certain date.

Q. I hand you what is in evidence as defendants' exhibit 1 and ask you if this is the letter you refer to; the same language?

A. (Examining letter) Something similar to it. I don't remember just how it read.

Court: Is it your best judgment that is the letter?

Witness: About the same I guess; something like it.

Q. It could have been identical to this?

A. I don't know exactly; it could have been.

Q. Do you know whether or not the letter did say, as this one, that the Decatur plant will resume operations on Wednesday, August 22nd?

A. I don't remember. It must have, that they were going to open.

Q. You went back?

A. Yes, sir.

Q. You went back every day thereafter?

A. Yes, sir.

Q. During the strike and since?

[fol. 247] A. I went back after it opened.

Q. The picketing continued for a period of time after the plant reopened?

A. Yes, sir.

Q. You went in every day after that?

A. Yes, sir.

Q. Still working there?

A. Yes, sir.

Q. When you came up to the picket line, did anybody advise you that the plant was closed to hourly employees?

A. You mean the morning of the strike or when we came back?

Q. The morning of the strike.

A. The morning of the strike didn't nobody advise me.

Q. When did they first advise you?

A. I don't remember, of nobody advising me.

Q. You did sign the petition asking the company to reopen?

A. Yes, sir.

Q. While you were at the picket line on that morning, did you see salaried employees going through the picket line going to work?

A. I don't think I did. I didn't stay but a little while.

Q. What time did you get there?

A. I would say fifteen til eight.

Q. What time did you leave?

A. About 8:30.

Q. You didn't see anybody go in the plant during that time?

A. I don't think I did; no, sir.

Q. You didn't see any cars go between the picket line, between 15 til 8 and 8:30?

A. I don't recall if it was.

Re-direct examination.

By Mr. Harris:

Q. Mr. Barnes, when you returned to work on August 22nd, was the Highway Patrol out there?

A. Yes, sir.

Q. You answered Mr. Adair and said that the picketing continued for some time after that you went back to work. I want to ask: How long did the Highway Patrol stay there?

Mr. Adair: I object.

Mr. Harris: He brought that out. He showed that. We [fol. 248] ought to show the Highway Patrol stayed there as long as picketing continued.

Mr. Adair: We don't think that is an accurate statement of facts in the first place.

Court: Sustained.

Mr. Harris: We except. We offer to show that the Highway Patrol remained on the scene patrolling it as long as the picket line was there.

Court: Sustained.

Mr. Harris: We except.

Mr. Wilkinson: We would like to show that we could prove that by a number of witnesses. If that is the Court's ruling, we will take an exception.

Court: You mean you want me to rule now?

Mr. Wilkinson: To save time. We wouldn't want to ask the same question to each witness.

Court: Certainly the ruling would be the same.

Mr. Wilkinson: We will just take an exception to the ruling.

MR. JAMES D. BAGWELL, next witness for the plaintiff, being first duly sworn, testified:

Direct examination.

By Mr. Harris:

Q. Your name is James D. Bagwell?

A. Yes, sir.

Q. Mr. Bagwell, where do you live?

A. At 2016 Eighth Street Southeast.

Q. Have you lived in Decatur a good many years?

A. Five or six years.

Q. On July 18, 1951, and that is the first date of the strike out at Wolverine Company, were you an employee of that company?

A. Yes, sir.

Q. Were you an hourly paid employee?

A. Yes, sir.

Q. On first shift?

A. Yes, sir.

Q. Did you leave home to go to work that morning?

A. Yes, sir.

Q. Anybody with you as you went on your way to work?

[fol. 249] A. Yes, sir; I rode with another man.

Q. Whom did you ride with?

A. Joe Sharp.

Q. Did he work there, too?

A. Yes, sir.

Q. Both on the first shift?

A. Yes, sir.

Q. When you left your home that morning, had anyone told you there was going to be a strike and a picket line that morning?

A. No, sir.

Q. You didn't know that?

A. No, sir.

Q. When you got there near the plant, what did you do?

A. We stopped down close to the concrete block plant.

Q. Who stopped you?

A. Hovis.

Q. Howard Hovis?

- A. I suppose so.
- Q. Do you see Hovis over at that table there?
- A. Yes, sir.
- Q. Did you park your car?
- A. Joe Sharp was driving. He did.
- Q. Did you walk on up to where they had the picket line?
- A. No, sir, I didn't walk up that far.
- Q. Did you have your lunch when you went to work that morning?
- A. Yes, sir.
- Q. You know whether Sharp had his or not?
- A. I am not sure.

No cross examination.

JAMES DILLEHAY, next witness for the plaintiff, being first duly sworn, testified:

Direct examination.

By Mr. Harris:

- Q. Your name is James Dillehay?
- A. Yes, sir.
- Q. Mr. Dillehay, you remember when they had a strike in the summer of 1951 at the Wolverine Company?
- A. Yes, sir.
- [fol. 250] Q. Were you working there at that time?
- A. Yes, sir.
- Q. You an hourly paid employee?
- A. Yes, sir.
- Q. Did you leave your home that morning to go to work?
- A. Yes, sir.
- Q. You worked on the first shift?
- A. Yes, sir.
- Q. Anybody go with you?
- A. No, sir, not that morning.
- Q. Did you take your lunch with you that morning?
- A. Yes, sir.
- Q. When you left home that morning, had anyone told you there was going to be a strike and a picket line out there that day?

A. No, sir, not that morning.

Q. As you approached the plant, did you see a picket line there?

A. Yes, sir.

Q. Did you get into work?

A. No, sir.

Cross examination.

By Mr. Adair:

Q. Mr. Dillehay, you also suing these defendants and their organization?

A. Sir?

Q. Do you have a law suit just like Mr. Russell's?

A. Yes, sir.

Roy D. FREE, next witness for the plaintiff, being first duly sworn, testified:

Direct examination.

By Mr. Harris:

Q. Your name is Roy D. Free?

A. Yes, sir.

Q. At the time the strike occurred at Wolverine in the summer of 1951, were you working there?

A. Yes, sir.

Q. Working on the first shift?

A. Yes, sir.

Q. An hourly paid employee?

[fol. 251] A. Yes, sir.

Q. Did you leave home that morning to go to work?

A. Yes, sir.

Q. Anybody with you?

A. No, sir.

Q. You went alone?

A. Yes, sir.

Q. When you left home that morning, did you have your lunch?

A. Yes, sir.

Q. Had anybody told you there was going to be a strike and a picket line before you left home?

A. No, sir.

Q. Did you get into work that morning?

A. No, sir.

Cross-examination.

By Mr. Adair:

Q. Did you sign a petition asking the company to reopen the plant?

A. Yes, sir.

Q. Who brought the petition to you, if you remember?

A. Mr. Carlos Thomas.

Q. How did he explain to you what it was?

Mr. Harris: We object as hearsay, immaterial and irrelevant.

Court: There's already a lot in along the same line. Overruled.

Mr. Harris: We except.

A. He told me to sign the petition to go to work.

Q. Did he tell you it was a petition to get the company to open the gates and let the people in?

A. Yes, sir.

A. M. HOWELL, next witness for the plaintiff, being first duly sworn, testified:

Direct examination.

By Mr. Harris:

Q. Your name is A. M. Howell?

A. Yes, sir.

Q. You live in Hartselle, in this county, and have all your life?

A. Yes, sir.

Q. On July 18, 1951, were you an employee of Wolverine Company?

A. Yes, sir.

[fol. 252] Q. Did you leave home that morning to go to work there?

A. Yes, sir.

Q. When you went to work, or as you went to work, was anyone riding with you?

A. Yes, sir.

Q. Tell the jury who was riding with you?

A. One of the boys was Truman Aldridge. I forgot the other fellow's name.

Q. How many were there?

A. Three.

Q. Did you have your lunch that day?

A. Yes, sir.

Q. Did Truman Aldridge have his?

A. Yes, sir.

Q. The other man have his?

A. Yes, sir.

Q. Had you heard anything when you left home that morning, there was going to be a strike there and a picket line that morning?

A. Nothing definite.

Q. Had you heard rumors?

A. Yes, sir.

Q. How long had you been hearing rumors?

A. Oh, about a couple of weeks that I remember.

Q. Did you get in to work that morning?

A. No, sir.

Q. How far did you get?

A. I drove up to the—just a little this side of the Alabama Flour Mill and pulled over and stopped.

Q. That was within how many feet of where the picket line was walking across the street down there?

A. 100 yards, I guess.

No cross examination.

JAMES C. HUGHES, next witness for the plaintiff, being first duly sworn, testified:

Direct examination.

* By Mr. Harris:

Q. Your name is James C. Hughes?

A. Yes, sir.

[fol. 253] Q. On July 18, 1951, were you working at the Wolverine Company?

A. Yes, sir.

Q. Were you an hourly paid employee?

A. Yes, sir.

Q. What shift did you work?

A. First.

Q. Did you leave home that morning to go to work?

A. Yes, sir.

Q. Was anybody with you?

A. Yes, sir.

Q. Who were they?

A. I don't recall who it was.

Q. You don't recall who it was?

A. No, sir.

Q. How many were with you?

A. Just myself and him.

Q. Two of you, counting yourself?

A. Yes, sir.

Q. Did you carry your lunch that morning?

A. Yes, sir.

Q. Do you know whether or not the man with you had his lunch?

A. No, sir, I couldn't say.

Q. You don't remember that?

A. No, sir.

Q. When you left home that morning, had anyone told you there was going to be a strike at Wolverine Company that morning?

A. They had the night before.

Q. How did you hear it the night before?

A. Aaron Julian, I believe, told me there was going to be a strike.

Q. Did he tell you when?

A. No, sir.

Q. Didn't tell you when it was going to be?

A. No, sir.

Q. Had you heard rumors of a proposed strike for some time?

A. No, sir.

Q. That was the only one?

A. There had been some of it, but I had not talked to anybody definitely about it, except this one time.

Q. How close to the plant did you get that morning?

[fol. 254] A. I got up even with the picket line.

Q. You got up even with the picket line?

A. Yes, sir.

Q. Did you get through it?

A. No, sir.

Cross examination.

By Mr. Adair:

Q. Mr. Hughes, you know the plaintiff in this case, Mr. Paul Russell?

A. Yes, sir.

Q. Did Mr. Paul Russell come to you and talk to you about filing a law suit against these defendants and their organization?

A. Yes, sir.

Q. Did you agree to file a suit, too?

A. Yes, sir.

Q. Did you file a suit?

A. Yes, sir.

Q. Is it pending?

A. Yes, sir.

COMER JUNKINS, next witness for the plaintiff, being duly sworn, testified:

Direct examination.

By Mr. Harris:

Q. Mr. Junkins, where do you live?

A. Falkville.

Q. How long have you lived there?

A. About all my life.

Q. On July 18, 1951, where were you working, Mr. Jenkins?

A. Wolverine Company.

Q. Did you leave home on that morning to go to work?

A. Yes, sir.

Q. Anybody with you as you went to work?

A. No one but myself.

Q. Did you carry your lunch with you?

A. Yes, sir.

Q. When you left home, had anyone told you there was going to be a strike and a picket line there that morning?

A. No, sir.

[fol. 255] Q. How close to the plant did you get that morning?

A. About a quarter from the plant, I guess. It was about a fourth. I was a good piece from the Universal Block plant.

Q. What did you do then?

A. I was there stopped.

Q. Who stopped you?

A. Ralph Webster.

Q. What did you do then?

A. I sat there a few moments and saw the others going on up that way, so I got up and walked near the picket line.

Q. Did you get into the plant?

A. No, sir.

Cross examination.

By Mr. Adair:

Q. You live at Route # 1, Falkville?

A. Yes, sir.

Q. You have a friend out there, A. J. Collum, Albert Collum?

A. Yes, I know him.

Q. "Collum"?

A. Yes, sir.

Q. After this occasion, did Mr. Paul Russell, the plaintiff in this case, come to you and try to get you to file a law suit against these defendants and their organization?

A. No.

Q. Who did?

A. Nobody. That was my own opinion.

Q. How did you happen to file your own law suit?

Mr. Harris: We object. He has a perfect right to.

Court: Sustained.

Q. Have you filed a law suit identical to the Russell action against these defendants and their organization?

A. Have I?

Q. Yes, sir.

A. Yes, sir.

Q. Is it pending now?

A. Yes, sir.

Q. Did you go to Collum's house with a back to work petition?

A. No. I saw him in town.

Q. You had the petition with you?

[fol. 256] A. Yes, sir.

Q. What town?

A. Falkville.

Q. I will ask you if you said to Collum the following: "I have got a petition here. We are going to try to get the company to reopen the gates. We have to have 250 names on it in order to get the company to open"?

A. No, I didn't state the latter.

Q. The 250?

A. I didn't specify any. I just asked him to sign it.

Q. Did you state this part: "We are going to try to get the company to open the gates"?

A. No, sir. I just told him we wanted to see what it would do. We were asking the company for jobs and it might be we could get back in if enough would go in to operate.

Q. And what else?

A. If enough would go back, they might let us operate the plant. Of course, I couldn't operate it by myself.

Q. They might let you work?

A. Yes.

Q. You knew then, did you, that the plant was closed to hourly paid employees at that time?

A. I knew we couldn't get in.

Q. You knew the gates were closed?

A. They were not closed the last time I saw them.

Q. Did you see salaried employees going in?

A. No, sir, they were already gone in when I was there.

Q. The petition you were taking around was for the purpose of getting the company to resume operation?

A. That's right.

Q. Is it your testimony that you felt that if you got enough people to sign the petition to operate, the company would reopen?

Mr. Harris: We object; that calls for a mental operation of the witness; invades the province of the jury.

Court: Sustained.

Q. How many signers were you trying to get on the petition?

A. Anybody that wanted on it.

Q. How many?

A. I didn't have any special number. I wanted all I could get.

[fol. 257] Q. How many did you think it would take?

Mr. Harris: We object; that calls for a mental operation.

Court: Sustained.

Q. What was the purpose of getting signatures to the petition?

A. I was wanting to go back to work myself.

Q. Who was the petition to be presented to?

A. I don't know.

Q. You didn't know that?

A. No.

Q. Did Paul Russell talk to you about the petition?

A. Not to begin with. I have talked to several about it.

Q. Who gave you the forms you were to use?

A. I don't remember how I got the first one. We got another one after we got the first one up.

Q. The first one you got up said if the company will open the gates, we will cross the picket line?

A. Yes, sir.

Q. And the one later furnished to you was worded in different language, was it not?

A. A little bit.

Q. You know whether or not Mr. Harris prepared the petition?

A. No, I couldn't swear to that.

Q. It was furnished to you from some outside source?

A. Yes.

JAMES KIRBY, next witness for the plaintiff, being first duly sworn, testified:

Direct examination.

By Mr. Harris:

Q. Your name is James Kirby?

A. Yes, sir.

Q. On July 18, 1951, did you work at the Wolverine Tube?

A. Was that the day of the strike?

Q. Had you worked for the company before that?

A. Yes, sir.

Q. How long had you worked there?

A. From the 23rd day of August, up until the strike.

Q. Two or three years?

A. Yes, sir.

[fol. 258] Q. At that time, what shift were you on?

A. On the first shift.

Q. Did you leave home that morning to go to work?

A. Yes, sir.

Q. Anybody with you?

A. No, sir.

Q. Did you carry your lunch?

A. I did.

Q. When you left home that morning had anyone told you there was going to be a strike and a picket line that morning?

A. Not definitely.

Q. Did you get in to work that morning?

A. I didn't.

Cross examination,

By Mr. Adair:

Q. You filed a law suit just like Russell's against these defendants and their organization, didn't you?

A. I have.

Q. Still pending?

A. Yes, sir.

Q. Mr. Kirby, did Mr. Russell come to you and talk to you about filing that law suit?

A. We talked about it.

Q. Did he ask you to file?

A. We just talked, and we decided we would.

Q. He the first one that mentioned it to you?

A. Yes, sir.

Q. You didn't mention it to him?

A. No, sir.

Q. Where did he send you to get it filed?

A. We just talked it over and decided we would.

Q. He didn't tell you to go to see Mr. Harris?

A. We went to see Mr. Harris. We saw Mr. Harris about the case.

Q. Mr. Kirby, do you know Horace Knight?

A. Yes, sir.

Q. Was Horace Knight working at the plant prior to the strike?

A. He was.

Q. What was his job out there?

[fol. 259] A. I believe he was working in the scrap department.

Q. Did you visit with Horace Knight with the petition which was requesting the company to reopen the gates and let the people come to work?

A. I did.

Q. Did you not tell Mr. Horace Knight that Mr. Watts and Mr. Bowden told you they thought the petition was a good thing?

A. No, sir.

Q. You know who Mr. Watts is?

A. Yes, sir. He's a superintendent.

Q. Who is Mr. Bowden?

A. One of the personnel men.

Q. What did you tell them about the petition? Did you tell him what they said?

A. I didn't tell him anything about what they said.

Q. What did you tell him, if anything, about how many men you thought it would take?

A. I told him it would take approximately half of them.

Q. Half of what?

A. Of the men that came out, or had been working.

Q. How many was that?

A. Five hundred and something.

Q. You thought it would take about half of that number?

A. Yes, sir.

Q. What information did you base that estimate on?

A. I just told him I believed if we could get that many I believed the gates would be opened.

Q. You, of course, knew they were closed at that time?

A. I had not been to the gate. I couldn't get to the gate.

Q. But you told him you believed if you could get that many, the company would open the gate?

A. I believed they would.

Q. Did you visit other houses and talk to other people about signing the petition to get the company to open the gates?

A. I did.

Q. Were you active also in The Decatur Industrial Employees Club?

A. I was.

Q. Were you active also in the decertification petition that he filed?

A. I was.

[fol. 260] Q. You know him pretty well?

A. Just since we have been working at the plant together.

Q. You've been pretty close together on these things I mentioned?

A. Just in and out.

Q. You are friends, are you not?

A. I suppose so.

N. A. PALMER, next witness for the plaintiff, being first duly sworn, testified:

Direct examination.

By Mr. Harris:

Q. You N. A. Palmer?

A. Yes, sir.

Q. Live in Decatur, do you?

A. Yes, sir.

Q. You lived in this county practically all of your life?

A. That's right.

Q. At the time the strike occurred at Wolverine Tube had you been working there for several years?

A. I went there the 13th of October when they started.

Q. Was that 1948, 1949?

A. 1948.

Q. Did you work on first shift?

A. Rotating shift.

Q. At the time this strike took place, what shift were you on?

A. First shift.

Q. Did you leave home that morning to go to work?

A. I did.

Q. Did you take a lunch?

A. Yes, sir.

Q. Anybody go with you?

A. No, sir.

Q. You went by yourself?

A. Yes, sir.

Q. When you left home that morning, had anyone told you there was going to be a strike and a picket line at that plant that morning?

A. No, sir.

Q. Did you get into the plant?

A. No, sir.

[fol. 261] Cross examination.

By Mr. Adair:

Q. Mr. Palmer, have you filed a law suit like the one Russell filed?

A. Yes, sir.

Q. Did Mr. Russell talk to you and ask you to file that?

A. He did not.

Q. Who did?

A. Not anyone.

Q. That your idea?

A. It was.

Q. You know whether or not your law suit is identical word for word with Russell's?

A. I do not.

Q. Have you seen the pleading in that law suit?

A. No, sir.

Q. You have not?

A. I have not.

Q. You don't know what it alleges?

A. I don't know what his pleading is. I have not seen them.

Q. Mr. Palmer, did you sit in this court room yesterday and listen to the testimony for over an hour?

A. I did not.

Q. How long were you back there?

A. Not at all.

Q. Did you sign a back to work petition?

I did.

Q. Do you remember who brought that to you?

A. No, I do not. I had one of them myself.

Q. You had a copy that you were getting people to sign?

A. Yes, I did.

Q. Mr. Palmer, was that petition for the purpose of getting the company to reopen the gates and let the people in?

A. Not for that. The only thing we wanted with that was to get the line opened where we could get to work.

Q. Didn't the petition read—wasn't it addressed to the company, and asked the company to resume operations?

A. I don't recall the exact words of the petition now.

Q. You don't know what was on it?

A. I know about the substance of it, but I don't know, recall the words.

[fol. 262] Q. What was the substance of it?

A. We were just asking for a job where we could go to work.

Q. I will ask you if the substance of it was in line with the following: The undersigned, who were employed by you at the time of the work stoppage caused by the present strike, do hereby request that you reopen the plant for work and do hereby individually propose to resume work for you on the same terms and conditions of employment as were in effect at the time of the work stoppage"? Is that what it said?

A. I don't remember the words, but it had the same effect of that.

Q. Was it to that same general tenor?

A. The best of my recollection.

Q. You recollect whether or not it did say "we request you to reopen the plant"?

A. I do not.

Q. You don't deny it said that?

A. I don't remember.

D. E. TAYLOR, next witness for the plaintiff, being first duly sworn, testified:

Direct examination.

By Mr. Harris:

Q. You are Mr. D. E. Taylor?

A. Yes, sir.

Q. Mr. Taylor, you remember the strike that occurred at Wolverine Tube in the summer of 1951, do you?

A. Yes, sir.

Q. At the time that strike took place, had you been employed there?

A. Yes,

Q. You an hourly paid employee?

A. Yes.

Q. At that time what shift were you on?

A. First shift.

Q. On the morning of that strike, first day of it, did you leave your home to go to work?

A. I did.

Q. Anyone with you?

A. No, sir.

Q. Did you carry your lunch with you?

¶ A. Yes.

[fol. 263] Q. When you left home that morning, had anyone told you there was going to be a strike and a picket line there that morning?

A. No.

Q. How close to the plant did you get that morning?

A. I got to the railroad crossing.

Q. There are two or three railroad crossings. Do you mean the one where the pickets were walking in a circle across the street?

A. The last one before you get to the plant.

Q. That is as far as you got?

A. Yes, sir.

Q. You didn't get in to work?

A. No, sir.

Cross examination.

By Mr. Adair:

Q. Did you sign a petition asking the company to reopen?

A. I did.

Q. You remember who brought it to you?

A. I think I came here in this room and signed it on my own.

Q. Who brought it to you?

A. No one brought it to me.

Q. When the plant reopened, you did go back to work?

A. I did.

Re-direct examination.

By Mr. Harris:

Q. You say you signed that petition in this very room here?

A. Yes, sir.

Q. How many people were up here?

A. I don't remember even roughly.

Q. Was there a good crowd here?

A. The room was half full.

Q. Most of them employees of Wolverine?

A. Yes, sir.

Q. Some members of the union and some of them not?

A. Yes.

Mr. Adair: I object to leading the witness.

Court: Go ahead.

Q. It was a public meeting, was it not?

A. An open meeting.

Q. Had it been advertised in the newspaper?

[fol. 264] A. Yes, sir.

Q. Had it been advertised on the radio?

A. Yes, sir.

Q. Was every one who was here given an opportunity to sign that petition?

A. Yes, sir.

Re-cross examination.

By Mr. Adair:

Q. Was the plaintiff in this case, Paul Russell, was he chairing the meeting or in charge of that meeting?

A. I don't remember.

Q. You know what I mean by "chairing"?

A. I don't remember that.

Q. You know whether or not he was here and did speak?

A. He was here.

Q. Did he speak to you?

A. Yes.

JAMES W. THOMPSON, next witness for the plaintiff, being first duly sworn, testified:

Direct examination.

By Mr. Harris:

Q. Your name is James W. Thompson?

A. Yes, sir.

Q. On July 18, 1951 and prior to that time, were you employed by Wolverine Tube?

A. Yes, sir.

Q. Were you on the first shift?

A. Yes, sir.

Q. On July 18, 1951 did you leave your home to go to work?

A. Yes, sir.

Q. Was anybody with you as you went to work that morning?

A. Yes, sir.

Q. Who?

A. Albert Barron.

Q. Did you have your lunch with you?

A. Yes, sir.

Q. Did Mr. Barron have his lunch?

A. Yes, sir.

[fol. 265] Q. Did he work on the first shift?

A. Yes, sir, he was on the first shift.

Q. You all went together?

A. Yes, sir.

Q. When you left home that morning, had anyone told you there was going to be a strike and a picket line that morning?

A. No, sir.

Q. What was the first you knew of that?

A. When I got there; before I got there. When I got to the Universal Concrete place there.

Q. That is just a short distance west of the plant?

A. Yes, sir.

Q. And what did you see there?

A. Webster was standing in the middle of the road and told me I would have to park.

Q. Webster was standing in the middle of the road and told you you would have to park?

A. Yes, sir.

Q. Did you park?

A. Yes, sir.

Q. Did you go on up near the picket line?

A. Yes, sir, after I parked.

Q. Did you get into work?

A. No, sir.

Q. Did you return to work on August 22, 1951?

A. Yes, sir.

Q. You didn't work any between July 18th until August 22nd at that plant?

A. No, sir.

Q. When you went back to work on August 22nd, was your car in what we call a caravan or convoy?

A. No, sir.. Barron and I went in together again, and we were the only car along at that time.

Q. What time did you go in that morning?

A. About 7:30.

Q. You got there before the convoy got there?

A. I imagine so.

Q. Is that your best judgment?

A. Yes, sir.

[fol. 266] Q. Did you see it come in?

A. Yes, sir, it come in after we did.

Q. Tell the jury what, if anything, happened as you rode into the plant that morning.

A. As we rode into the plant that morning, just before we got to the picket line, the Patrol had us stopped. We stopped: He talked to Barron which was driving. And then when he finished talking, he told him to go ahead. Just as he pulled off, here come a hand in the window and hit me on the chest and forearm and tore my shirt off as we pulled off.

Q. A hand came in the car and hit your chest and forearm and tore your shirt off? Did you see who did that?

A. Well, no, sir. Not to identify anybody, but the Patrol was standing right by us and got the man who did it.

Q. You cannot identify the man and could not state of your own knowledge who did it?

A. No, sir.

Cross examination.

By Mr. Adair:

Q. Mr. Thompson, do you have a law suit just like Mr. Russell's filed against these three defendants and their organization?

A. I have one filed.

Q. Still pending, is it not?

A. Yes, sir.

Q. You know whether or not it was either of the three defendants that allegedly grabbed your shirt?

A. No, sir, it was neither of the three.

Q. Wasn't them?

A. I don't think so.

Q. Did you sign the petition asking the company to re-open?

A. I signed a petition agreeing to go back to work as when the work stopped on July 18th.

Q. That petition asked the company to resume operation?

A. No, sir, I don't know as it did. The best I remember, it was only agreeing to go back to work in case they did.

Q. Did what?

A. Open the plant or agree for us to go back to work.

Q. Did they agree to open the plant?

A. We went back to work, yes, sir.

[fol. 267]

THOMAS E. TODD, next witness for the plaintiff, being first duly sworn, testified:

Direct examination.

By Mr. Harris:

Q. Are you Mr. Todd?

A. Yes, sir.

Q. Mr. Todd, you remember when there was a strike at Wolverine Tube in the summer of 1951?

A. Yes, sir.

- Q. Had you been working some time prior to that?
- A. Little over a year.
- Q. What shift were you on?
- A. First shift.
- Q. Did you leave home to go to work that morning?
- A. Yes, sir.
- Q. Did you carry your lunch with you?
- A. Yes, sir.
- Q. Did you go with anyone, and if so, whom?
- A. I went with Dan McCoy.
- Q. Did Mr. McCoy take his lunch?
- A. Yes, sir.
- Q. He on the first shift, too?
- A. Yes, sir.
- Q. When you left home that morning, had anyone told you there was going to be a strike and picket line there that morning?
- A. Not directly. Just rumors.
- Q. How far did you get toward the plant?
- A. We stopped before you get to the first curve, the first railroad track you cross, and I walked on up. I was up in front of the flour mill sitting down.
- Q. How close to the picket line was that?
- A. I guess about 200 feet or yards.
- Q. That is as close to the plant as you got?
- A. Yes, sir.

No cross examination.

PAUL BUCHANAN, next witness for the plaintiff, being first duly sworn, testified:

Direct examination.

[fol. 268] By Mr. Harris:

- Q. Your name Paul Buchanan?
- A. Yes, sir.
- Q. You live in Decatur?
- A. Yes, sir.
- Q. How long have you lived here?

A. All my life.

Q. You remember when the strike occurred at Wolverine on July 18, 1951?

A. Yes, sir.

Q. Had you been working there for some time?

A. Yes, sir.

Q. What shift did you work?

A. Second shift.

Q. That was from four o'clock in the afternoon until midnight?

A. Yes, sir.

Q. Did your wife also work there?

A. Yes, sir.

Q. What did she do?

A. Second shift first aid nurse.

Q. Nurse?

A. Yes, sir.

Q. First aid nurse for the second shift?

A. Yes, sir.

Q. Her hours the same as yours?

A. Yes, sir.

Q. Was your wife paid a salary?

A. Yes, sir.

Q. How were you paid?

A. Hourly rate.

Q. You were an hourly rated employee?

A. Yes, sir.

Q. On the afternoon of July 18th did you and your wife leave your home and proceed toward the plant?

A. Yes, sir.

Q. Who was driving?

A. I was.

Q. You and she the only ones in the car?

A. Yes, sir.

[fol. 269] Q. As you approached the plant, tell the jury whether you saw any pickets walking in a circle in the street.

A. Yes, I saw the pickets walking in a circle in the street.

Q. Did you drive on up toward where the pickets were?

A. Yes, sir.

Q. State whether or not anyone stopped you, and if so, who?

A. Howard Hovis stopped me.

Q. How did he stop you?

A. He flagged me down, and the boys didn't get out of the street either.

Q. The boys? You mean the pickets?

A. Yes, sir.

Q. Howard Hovis flagged you down to stop?

A. Yes, sir.

Q. How near the picket line were you?

A. 15 feet.

Q. Did Hovis say anything there?

A. He told me I couldn't go through.

Q. He told you you couldn't go through?

A. Yes, sir.

Q. Did he say anything else?

A. No, sir.

Q. Did he say anything to or about your wife?

A. I told him I just wanted to take her down to the gate.

He said I couldn't.

Q. He said you couldn't take her down to the gate?

A. Yes, sir.

Q. What happened then?

A. She got out of the car and I had to turn around and go back.

Q. How did she get into the plant?

A. She started walking and one of the guards at the gate stopped Mr. Trimble and asked him to pick her up, and he backed up and picked her up. She walked half way.

Q. Trimble turned back and picked her up between the picket line and the guard house?

A. Yes, sir.

Cross examination.

By Mr. Adair:

Q. As I understand, it was in the afternoon when you went out to the picket line?

[fol. 270] A. Yes, sir.

Q. You knew there was a strike on at Wolverine at that time?

A. Yes, sir, I had been told that.

Q. You were not trying to get in yourself. You stated you just wanted to take your wife down to the gate?

A. That's right.

Q. What hours do you work?

A. 4 until 12.

Q. This was about four o'clock?

A. About 3:30.

Q. That the ordinary time you would have gone in to work?

A. That's right.

Q. Did they object, did Hovis object to your wife going in to work?

A. No, sir.

Q. She continued to work during the strike?

A. Yes, sir.

Re-direct examination.

By Mr. Harris:

Q. You say you had been told there was a picket line out there. State who told you and when it was and under what circumstances.

A. Well, my father-in-law first told me that he had got wind of the strike at the plant.

Q. When was that?

A. That morning.

Q. What time?

A. Around 8 or 8:30 in the morning.

Q. Did you call anyone to find out if it were true?

A. Yes, sir, I called Roy Street.

Q. Who is he?

A. He works at the Standard Oil Bulk Plant. That is about 100 yards from where the picket line was.

Q. What did he tell you?

A. Said "yes, they're having a strike, but some are going in and some are not."

Q. Did he tell you whether hourly paid employees were getting in?

A. No, sir.

J. E. RICHARDSON, next witness for the plaintiff, being first duly sworn, testified:

[fol. 271] Direct examination.

By Mr. Harris:

Q. Your name is Joseph E. Richardson?

A. That's right.

Q. You remember when they had a strike at the Wolverine Tube?

A. I do.

Q. Had you been working there sometime at that time?

A. I had.

Q. Hourly paid employee?

A. Yes, sir.

Q. What shift did you work on?

A. First.

Q. Did you leave your home to go to work on that morning that the strike began?

A. Yes, sir.

Q. Did you go with anybody?

A. Yes, sir.

Q. With whom?

A. Harold Whitmire and G. W. Pepper.

Q. Harold Whitmire and G. W. Pepper?

A. Yes, sir.

Q. Did you carry your lunch with you?

A. Yes, sir.

Q. When you left home that morning, had anyone told you there was going to be a strike and a picket line there at Wolverine Tube that morning?

A. No, sir.

Q. What was the first you found out about it?

A. When I got to the picket line.

Q. Did you go on up to where the picket line was?

A. Yes, sir.

Q. Did you talk to anybody up there?

A. Yes, sir.

Q. With whom?

A. Webster.

Q. What was said there?

A. I was trying to get through the line to go to the guard house to get my check.

Q. You were trying to get through to get your check!
[fol. 272] A. Yes, sir.

Q. When was your regular pay day there?

A. Tuesday.

Q. This strike started on Wednesday, did it?

A. Yes, sir.

Q. Your regular pay day was Tuesday?

A. Yes, sir.

Q. Had you worked the day before?

A. No, sir.

Q. And had not gotten your check?

A. No, sir.

Q. Did you tell Webster that?

A. Yes, sir.

Q. What did he say?

A. He told me to see Mike Volk.

Q. Who was Mike Volk?

A. He was one of the fellows with them holding the strike.

Q. Did you talk to Volk?

A. I did.

Q. Tell the jury what your conversation was.

A. I asked him to go through the line to get my check. He said, "Sit down; possibly I will see you later."

Q. What did you do then?

A. I got off the road and waited until 9 or 9:30. My foreman come by and I asked him to bring it out to me, and he did.

Q. What time did your conversation with Volk take place?

A. It must have been 8:30. A few minutes after I got there.

Q. How long between then and the time the foreman brought your check out to you?

A. I don't remember exactly. It was a pretty good while.

Q. Did you ever talk to Volk any more?

A. No, sir.

Q. Never did get through the picket line?

A. No, sir.

Q. Where did that conversation with Volk take place?

A. It was near the line.

Q. How close to it?

A. I don't remember definitely. Must have been 50 or 100 feet; I think in that area.

[fol. 273] Q. Any chair there any place to sit down?

A. They were lined up on the road sitting down and standing around. He said "wait".

Cross examination.

By Mr. Adair:

Q. Have you got a law suit filed against these defendants and their organization like Russell?

A. I have.

Q. Mr. Russell talk to you about getting you to file that suit?

A. He didn't talk to me. We talked about it.

Q. He talked to you about filing suit. Did he tell you about how to go about it?

A. No.

Q. How did you find out how to go about it?

Mr. Harris: We object; immaterial, irrelevant.

Court: Overruled.

Mr. Harris: We except.

A. I asked a lawyer.

Q. Did Mr. Russell send you to the lawyer?

A. No.

Q. Who was the lawyer you went to?

A. Mr. Harris.

Q. Did you know Mr. Harris was handling Russell's suit at that time?

A. No.

Q. You know your suit is still pending?

A. I do.

BRUCE Ross, next witness for the plaintiff, being first duly sworn, testified:

Direct examination.

By Mr. Harris:

Q. State your name.

A. Bruce Ross.

Q. Mr. Ross, you remember when they had a strike at Wolverine Tube?

A. I don't remember the exact date. I believe it was July 18th.

Q. 1951?

A. Yes, sir.

Q. Had you been working out there for some time prior to that?

A. I had been working there my third year.

[fol. 274] Q. What shift were you on?

A. First.

Q. Did you leave home on that morning to go to work?

A. That's right.

Q. Did you go with anyone?

A. Yes, I went with A. M. Huskey, Millard Green and Truman Aldridge.

Q. Mr. Huskey, Millard Green and Truman Aldridge?

A. Yes, sir.

Q. Did you have your lunch with you?

A. Yes, sir.

Q. When you left home that morning, had anyone told you there was going to be a strike and a picket line that morning?

A. I had heard rumors going around there was to be, but there had been rumors previously of the same thing, but they didn't materialize, and I came on to work thinking these might be false.

Q. As you approached the plant, did you see a picket line?

A. That's right, a picket line.

Q. Did you go up to it?

A. I went within about 20 feet after he parked the car.

Q. Did you get through?

A. No.

Q. You didn't get in to work that day?

A. No, sir.

No cross examination.

HAROLD C. WHITMIRE, next witness for the plaintiff, being first duly sworn, testified:

Direct examination.

By Mr. Harris:

Q. Mr. Whitmire, you remember when they had the strike?

A. Yes, sir.

Q. Were you working there at that time?

A. Yes, sir.

Q. What shift?

A. First.

Q. On the first day of that strike, did you leave your home to go to work?

A. Yes, sir.

Q. Did you have your lunch with you?

[fol. 275] A. Yes, sir.

Q. With whom did you ride?

A. Joe Richardson and G. W. Pepper.

Q. Joe Richardson and G. W. Pepper. Anyone else?

A. That's all.

Q. When you left your home that morning, had anyone told you that there was going to be a strike and a picket line out there that morning?

A. No, sir.

Q. Did you get into the plant?

A. No, sir.

No cross examination.

JACKSON WALDROP, next witness for the plaintiff, being first duly sworn, testified:

Direct examination.

By Mr. Harris:

Q. You are Mr. Waldrop?

A. Yes, sir.

Q. What is your first name?

A. Jackson.

Q. You remember when there was a strike at Wolverine Tube on July 18, 1951?

A. Yes, sir.

Q. Had you been working at that plant prior to that time?

A. Yes, sir.

Q. On what shift?

A. First, eight to four.

Q. On that morning did you leave home to go to work?

A. Yes, sir.

Q. Did you take your lunch with you?

A. Yes, sir.

Q. You go with anyone?

A. Mr. Paul Miller went with me.

Q. He work at the plant?

A. Yes, sir.

Q. Did he work on the first shift, also?

A. Yes, sir.

Q. Did you take your lunch with you?

A. He taken his?

[fol. 276] Q. No, you.

A. I believe I did.

Q. You know whether he took his?

A. I think so.

Q. That your best recollection?

A. Yes, sir.

Q. Had anyone told you there was going to be a strike and a picket line out there that morning?

A. I had just heard it the day before.

Q. You had heard a rumor the day before?

A. Yes, sir.

Q. For some period of time, had you heard rumors of a strike there?

A. Yes, sir.

Q. Had other rumors been around fixing the date when it was going to take place?

A. I don't remember that.

Q. You don't remember the date?

A. No.

Q. Had the other rumors turned out to be true?

A. Sir?

Q. Had the rumors you heard before you heard this one turned out to be true or false?

A. Yes, sir, true.

Q. Here's what I am trying to get: What were those other rumors?

A. About a strike.

Q. Did they say when?

A. Yes, sir.

Q. When was that?

A. The 22nd of August.

Q. 22nd of August?

A. I mean of July.

Court: You've got your dates all confused.

Witness: It was the 18th.

Q. How close to the picket line did you get?

A. I would say 300 yards in my car.

Q. Then did you walk on up?

A. Yes, sir.

Q. How close would you say you got?

A. In 100 feet; something like that.

[fol. 277] Q. You didn't get through it?

A. No, sir.

No cross examination.

C. E. WOODWARD, next witness for the plaintiff, being first duly sworn, testified:

Direct examination.

By Mr. Hargis:

Q. Mr. Woodard, you remember when they had the strike at Wolverine?

A. Yes, sir.

Q. Were you working there at that time?

A. Yes.

Q. What shift were you on?

A. First shift.

Q. On the morning of the first day of the strike, did you leave your home to go to work?

A. Yes, sir.

Q. Take your lunch with you?

A. Yes, sir.

Q. Did you go with anyone?

A. No, sir, by myself.

Q. By yourself?

A. Yes, sir.

Q. When you left home that morning, had anyone told you there was going to be a picket line there that morning?

A. I heard it would be; rumored.

Q. You remember from whom you heard that?

A. No, sir, I don't. I don't remember who told me.

Q. Had there been such rumors prior to that?

A. I believe they had; yes.

Q. Had they turned out to be true or false?

A. That was the first strike.

Q. How close to the picket line did you get?

A. I would say 15 or 20 feet.

Q. You didn't get through it?

A. No, sir.

Cross examination.

By Mr. Adair:

Q. Mr. Woodard, have you filed a law suit identical or [fol. 278] substantially identical to Mr. Russell's against these same defendants and their organization?

A. Yes, sir; that's right.

Q. Did Mr. Russell talk to you about filing that law suit?

A. No; we met several times and talked it over together; like that.

Q. Was he the first one that mentioned it to you?

A. No, I don't think so.

Q. Who mentioned filing the law suit to you first; who suggested it?

A. It was going around through the plant. That is about all.

Q. The petition going through the plant to sign up to file suit?

A. No, sir.

Q. What kind of paper?

A. No kind of paper going through.

Q. What was going through the plant?

A. We saw a clipping in a paper from Chattanooga where the union had been sued.

Q. That is when you decided to sue?

A. We thought we might find out about it.

Q. Who first saw that clipping?

A. I believe Frost brought it to my attention.

Q. What did you do to find out about it?

A. I didn't do anything.

Q. Who did?

A. I don't know.

Q. You know what is contained in your law suit? You have read your complaint?

A. Yes.

Q. You remember the pleadings, your complaint?

A. I don't right now.

Q. Do you know whether you read it or not?

A. I don't know whether I read it or not. I believe I would not say I know.

Q. You remember what you claim what happened to you?

A. Sure.

Q. Who wrote it?

A. I wouldn't know.

Q. You know whether it is identical to Russell's or not?

A. I didn't read his.

Q. Mr. Woodard, did you take the petition around to

[fol. 279] employees asking them to sign a petition that was asking the plant to reopen?

A. I carried it to some of the boys, yes.

Q. What did you do with that petition after you got the signatures on it?

A. I handed it in I believe in this court room.

Q. To Russell?

A. No, we had a table right there (indicating) and I handed them to the table.

Q. Mr. Harris here that day?

A. I believe so.

Q. That is the lawyer?

A. Yes, sir.

Q. Mr. Harris here at that meeting?

A. Yes, sir, he was here.

Q. Was the purpose of that petition to get the plant to reopen the gates so the men could go in to work?

A. That was the general understanding, that we would get to work.

Q. Was any understanding of how many to get to sign it in order to get in to work?

A. No, we were just trying to get as many as we could.

Q. And asked the company to reopen?

A. Yes, that's right.

Q. And they did reopen after you turned it in?

A. We went back to work I believe the 25th of August, I believe it was—22nd of August.

HERBERT L. DOBBS, next witness for the plaintiff, being first duly sworn, testified:

Direct examination.

By Mr. Wilkinson:

Q. Where do you live, Mr. Dobbs?

A. A fourth of a mile east of Hartselle.

Q. You work at the copper plant up to the strike on July 18, 1951?

A. Yes, sir.

Q. Were you a member of the union at that time?

A. Yes, sir.

Q. Did you attend a union meeting on the night of July 17, 1951 here in Decatur?

A. Yes, sir.

[fol. 280] Q. Was that the night they voted to strike, and a strike was called?

A. They voted we would strike before then.

Q. What happened at that meeting with reference to the strike?

A. I don't know. They just said we would strike the next morning.

Q. Who was at the meeting, union official, leader?

A. Mr. Volk.

Q. Who else?

A. Hovis and Webster.

Q. Mr. Duncan up there?

A. I don't remember.

Q. Mr. Starling up there?

A. I don't remember.

Q. You remember the three you named: Volk, Webster and Hovis?

A. Yes, sir.

Q. Where was the meeting held?

A. At the union hall.

Q. C.I.O. Hall here in Decatur?

A. Yes, sir.

Q. Where is that located?

A. Up on Second Avenue, I don't know just exactly where?

Q. The number?

A. No, sir.

Q. What time of evening did the meeting convene?

A. About 7:30, I think.

Q. How many people were in attendance, in your judgment?

A. Quite a few.

Q. Give us your best judgment of the number there.

A. It was a hundred, I guess.

Q. In your best judgment?

A. Yes, sir.

Q. Who did the speaking at the meeting; who all made speeches?

A. Mr. Volk and I don't remember.

Q. Anybody else speak besides Volk?

A. No, sir. I don't remember who all spoke.

Q. You remember how many speakers they had?

A. No, sir, I don't remember.

Q. Did you agree to go on the picket line the next day?

A. Yes, sir.

Q. Did you report out by the plant entrance for picket duty the next day?

[fol. 281] A. Yes, sir.

Q. What time did you get out there?

A. About eight o'clock, I guess.

Q. What time did you start to walking the picket line?

A. It was around noon before I walked.

Q. But you stayed in the vicinity of the picket line until your time came to walk?

A. Yes, sir.

Q. About how many were on the picket line when you got there?

A. Quite a few.

Q. Quite a few. Give us your best judgment of the number.

A. There was 12 or 15 I guess.

Q. Where were they walking?

A. Right on this side of the railroad out on this edge of the Wolverine property.

Q. At the entrance of the plant?

A. Yes, sir.

Q. And the picket line extended all the way across the street and were walking in a circle?

A. Yes, sir.

Q. Tell us who was on the picket line that you remember on that occasion.

A. There was Morris, Kenneth Sned, Robert Holmes—I don't remember.

Q. Boyd Stringer on there?

A. Yes, sir.

Q. Mr. Joe Clark?

A. He was out there.

Q. Clyde Bradshaw in the picket line?

A. He was there; I don't remember whether he walked.

Q. What was Hovis and Webster doing?

A. They was kinda leaders of the thing.

Q. What were they doing?

A. Just back under the tent at the edge.

Q. Directing traffic in any way?

A. I don't remember.

Q. You know a man named Brooks?

A. Yes.

Q. He on the picket line?

[fol. 282] A. Yes, sir.

Q. Did you see Paul Russell's car out near the picket line?

A. Yes, sir.

Q. Did you see Russell in the car?

A. Yes, sir.

Q. Did you hear anything said while his car was there at the picket line?

A. They said not let him through.

Q. Who?

A. I don't remember who.

Q. Anything else said?

A. They said, "Turn him over if he starts to go through."

Q. Do you recall who said that?

A. No, sir, I couldn't say.

Q. What were the instructions to the pickets with reference to the salaried employees and the hourly employees?

Mr. Adair: If he knows.

Mr. Wilkinson: He said he walked the picket line.

A. They said let the salaried people through, but not let hourly rated employees through.

Q. Who said that?

A. At the meeting the night before.

Q. When Volk and the others were doing the speaking?

A. Yes, sir.

Q. Was that what you tried to do while on the picket line?

A. I walked the picket line.

Q. You let the salaried employees through?

A. Yes, sir.

Q. You didn't see any hourly employees go through?

A. No, sir.

Cross examination.

By Mr. Adair:

Q. You stated you attended a union meeting on the 17th of July, the day before the strike here, and certain talks were made to you about the strike to come off the next morning. I will ask you whether or not you recall the negotiating committee coming in and reporting to that meeting that they had met with the officials of the company that afternoon to discuss the handling of the strike? You recall them telling the union meeting that?

[fol. 283] A. I don't recall it.

Q. Do you recall them reporting to the membership that they met with Mr. Oakes on that afternoon?

A. I don't remember.

Q. You don't recall them saying they had a conference with the company?

A. No, sir, I don't.

Q. To refresh your recollection, do you recall the union membership being told that the company had made an agreement with the union that it would be closed, the gates closed to all hourly paid employees, and that the salaried employees were to go in?

A. They were to do that?

Q. At the union meeting?

A. I don't remember.

Q. Do you deny that was told?

Mr. Wilkinson: We object to whether it is denied. He is not called on to deny it. If he doesn't remember, that is the end of it.

Q. Is that the instructions you talked about of letting salaried employees in? What was said that night about the agreement with the company?

A. They told us that night to let salaried employees in.

Q. And told you the gates were closed for the duration of the strike to hourly employees?

A. I don't remember.

Q. Did you see Mr. Oakes out there on the first morning of the strike? Did you see him come to the picket line and hear him congratulate Hovis of how it had been conducted and see him pull his identification card out of his pocket to show what salaried employees would have?

A. No. He may have been there.

Q. You hear any of that conversation?

A. No, sir.

Q. You state that the union meeting was at 7:30. Could that have been at 4 o'clock?

A. I didn't say 7:30.

Q. I beg your pardon. I thought you said 7:30 on the 17th. When was it?

A. I don't remember just exactly. It was in the evening sometime.

Q. If I told you a union meeting was held at one o'clock on [fol. 284] the 17th and these matters were discussed, about the plant having agreed it would be closed to hourly employees, would that refresh your recollection as to whether or not it might have been one o'clock?

A. It was along late in the evening.

Q. Do you know whether or not there were only the day shift and third shift in attendance at that meeting?

A. No, sir, I don't know.

Q. What shift were you on?

A. First.

Q. Day shift?

A. Yes, sir.

Q. Do you know whether or not the day shift of employees and the third shift—what time did the third shift work? 4 to 12?

A. 12 to 8.

Q. You know whether or not the day shift which is 8 to 5—

A. —8 to 4.

Q. Do you remember that there was two union meetings; one at one o'clock P.M. that day for certain shifts and a second meeting held at four o'clock P.M. for the other shift?

A. All I know is the day shift.

Q. The one you attended was the day shift meeting?

A. Yes, sir.

Q. You don't remember it being at night?

A. It was after our shift. I don't remember.

Q. By that you mean after four o'clock P. M.?

A. Yes, sir.

Q. Do you know whether or not that that started at four P.M.?

A. Later than that.

Q. But that was the meeting you attended? The one the day shift attended?

A. Yes, sir.

Q. You don't recall any discussion of the agreement that had been made that afternoon with the company?

A. No, sir, I don't.

Q. Out there on the picket line the following day, did you notice cars stopping and identifying themselves as salaried employees, some of them?

A. Yes, sir.

Q. And continuing on through?

[fol. 285] A. Yes, sir.

Q. And did you notice when they got down to the gate—salaried employees—that the guard opened the gate and let them in and closed the gate back behind him?

A. I don't remember about what happened out there after they went down.

Q. Your father a guard?

A. Yes, sir.

Q. Still there?

A. Yes, sir.

Q. Out there during the strike?

A. Yes, sir.

Q. Ordinarily, before the strike came off, if the morning shift was going into the plant, they would open the gate wide and the gate would stay open until the shift got in?

A. They closed it part of the time.

Q. What do you mean?

A. After you get through.

Q. After each car gets through?

A. If there isn't a bunch together.

Q. I am talking about at shift changing time. Isn't there a whole lot of cars going in?

A. Not all the time.

Q. Is it your testimony that they close the gate after each group of cars?

A. Sometimes.

Q. Sometimes?

A. Yes, sir.

Q. Sometimes they don't?

A. Yes, sir.

Q. What were they doing on the morning of July 18th with respect to opening and closing the gate?

A. I don't remember.

Q. You don't remember?

A. No, sir.

Re-direct examination.

By Mr. Wilkinson:

Q. Mr. Dobbs, the gate you speak of is how far from the picket line?

A. It is better than 100 yards.

[fol. 286] Q. Does the gate stay closed all the time unless people are passing through it?

A. Yes, sir.

Q. You belong to the union now?

A. No.

Re-cross examination.

By Mr. Adair:

Q. You have answered counsel there that the gate stays closed unless somebody is passing through. I just want to get it clear in my own mind as to what actually happens. At shift changing time when no strike is on, under ordinary circumstances, the gate is open and as long as that shift is coming in that gate stays open, and when the shift has gone in and there are no more cars in sight, they close it?

A. I have seen them close it.

Q. Ordinarily, it stays open until the shift gets in?

A. Not all the time.

Q. On the day of the strike, rather than doing that, they were opening the gate and letting salaried employees in and immediately closing the gate?

Mr. Wilkinson: We object to that; immaterial, irrelevant, argumentative.

Court: Overruled.

A. I don't remember what went on down there during that day.

Q. You didn't pay much attention, did you?

A. No, sir.

B. M. CORNELL, next witness for the plaintiff, being first duly sworn, testified:

Direct examination.

By Mr. Harris:

Q. Mr. Cornell, are you employed by Wolverine Tube Division?

A. I am.

Q. How long have you been with that company?

A. Since they opened here. Prior to that, November 11, 1946.

Q. Where were you with them from 1946 until the time they opened here?

A. I went to Detroit as an understudy; later assistant foreman, and came on Christmas Eve, 1947 down here.

Q. What is your official position and what do you call your title?

[fol. 287] A. General foreman of the converting department.

Q. Tell the jury what the converting department does.

A. The converting department is one of the production departments that receives the raw metal, casts it into billets, from there cut into extrusion blocks and from the extrusion blocks into base tube which supplies the drawing department with their starting material. They take the raw metal and make it into tubes.

Q. What is the first process through which the raw metal goes?

A. It is remelted and cast into billet forms.

Q. How is it melted?

A. In an electric induction furnace.

Q. I am asking you this as of the present time and to clarify it, is what you have said, was that applicable as of July 18, 1951?

A. Yes, sir.

Q. The procedure is now the same as it was then?

A. Yes, sir.

Q. It is melted in that furnace, and then what?

A. After it is melted, it is poured into a water cooled mold about 8 inches in diameter and eight feet in length and allowed to solidify, and discharged, and maybe stored temporarily, and when it is needed for extrusion billets, cut into fifteen inch lengths, run into a furnace to be heated, at which time it is put into an extrusion press and extruded into tube.

Q. The first furnace melts the metal?

A. Yes, sir. There are six melting furnaces.

Q. That is one step of the process?

A. One furnace actually melts it so it can be poured. The second furnace just heats it; doesn't melt it.

Q. After it comes out of the second furnace, what happens to it?

A. It goes into the extrusion press. To give you an example: Take a tube of toothpaste and squeeze it and you get a solid tube of toothpaste. If someone would take a toothpick and insert in the middle of the toothpaste, you would get a tube. Here, you have a solid eight inch die with an opening at the other end and when the pressure is applied, the metal is forced out into the opening between the mandrel and the die, and the tube is formed.

Q. What is the proper procedure if the plant is to be closed down with reference to the furnaces?

A. Say, when we take a normal week-end and when [fol. 288] advised we are not going to work that day, I pass the word around to my men that we will be down and set up a stand-by schedule.

Q. What do you do with reference to the furnaces?

A. The melting furnaces are not emptied, but they are held to a low temperature with a stand-by man to watch to see they don't over heat.

Q. What is done on the second furnace?

A. It is always emptied prior to a shutdown.

Q. You remember the strike which occurred on July 18, 1951?

A. Yes.

Q. Tell the jury whether or not when the third shift left there on the morning of July 18th at eight o'clock, whether or not these billets were in your second furnaces—the heating furnace, I believe you called it.

A. To my best recollection, it was almost full.

Q. The proper procedure, if the plant was going to close down, was to empty it?

A. If it was anticipated that was being done, it would have been emptied.

Q. What time did you get to the plant on the morning of July 18, 1951?

A. At approximately 6:30.

Q. What time did the third shift leave?

A. Eight o'clock.

Q. Was the machinery and raw benches and furnaces left in their usual and customary condition, similar to what would have been done if the first shift was coming in to operate?

A. Yes, sir.

Q. Did the first shift get in?

A. No.

Q. What was done with those billets that was in that heating furnace?

A. I had had some experience operating the extrusion press. We got the supervisors with no experience or some little experience to come over and act as a part of a crew of six to take and extrude and empty the furnaces by the regular process; but it was not at the regular, normal speed.

Q. You made tubing out of it?

A. Yes, sir.

Q. How long did that take?

A. Approximately from 1:30 to 7:30.

Q. That same day?

A. Yes, sir, where under normal operation the full [fol. 289] furnace would have been emptied in three and a half hours.

Q. If you had had an experienced crew in there?

A. Yes, sir.

Q. Did you continue to go to the plant during this strike daily?

A. Every day except Sunday.

Q. You remember when the company published an advertisement that it was going to resume operations?

A. Yes, sir.

Q. You remember the date of that?

A. No. I remember that the date they were to report to work was Wednesday, August 22nd.

Q. It is stipulated by counsel that the advertisement introduced in evidence as plaintiff's Exhibit 8 was published in The Daily on Monday, August 20, 1951, and on Tuesday, August 21, 1951.

Q. Mr. Cornell, were you at the plant on the afternoon of August 20, 1951?

A. I was.

Q. Did you leave the plant on that afternoon on a locomotive?

A. Yes, sir.

Q. Tell the jury where that locomotive started from and where it ran to.

A. It started well inside the plant site at its storage place in the quonset hut well east of the mill at the south end. We got aboard at the south end and drove up to the gate.

Q. Where is the gate?

A. The gate is across the railroad tracks around the bend which is east of the sub-station and approximately (at a guess) 100 yards from where the picket line was established.

Q. Approximately 100 yards from where the picket line was?

A. Yes, sir, southeast.

Q. Is that your best judgment as to that distance?

A. Yes, I think so. However, the gate does not enter into the picture at all.

Q. Is there a fence all the way around the company property?

A. Yes, sir.

Q. And a gate across that railroad track?

A. Yes, sir.

Q. I will ask you to look at Plaintiff's Exhibit "3" and see if that photograph shows the track, railroad track which you have reference to.

[fol. 290] A. (Examining photograph) The one on the right.

Q. I will ask you to take a fountain pen and draw an arrow pointing to that railroad track you mentioned. Draw another arrow as the railroad track proceeds on a curve toward the southeast.

A. Witness draws.

Q. Those two arrows show the point on the railroad track, do they?

A. Well, this is the track we are now talking about. The other is on the other side of the gate, around this bend, out of sight and from which direction we came.

Q. The gate is not shown on that picture?

A. That's right. It is out of sight.

Q. Do you see in this photograph a tank car and two gondolas?

A. Yes, sir.

Q. And are they on the track that you were testifying about?

A. They are.

Q. At the time the locomotive left the plant of the company, were there any cars of any sort of material situated on that railroad track, and if so, where?

A. There were five cars of copper ingots which had been in the yards in Decatur for some weeks and which the L. & N. switch engine brought out and stopped right at the property line.

Q. They were brought right to the property line?

A. Yes, and our purpose was to go get them.

Q. Left outside of the property line of the Wolverine Tube Company?

A. Yes, sir.

Q. As that track proceeds, how close did it come to the street where the picket line was maintained?

A. How close to the cars?

Q. What was the distance between the street and the track?

A. Possibly 20 to 25 feet.

Q. 20 to 25 feet. After the track made that curve and proceeded on in a westerly direction, did it more or less parallel that public street there?

A. It did down as far as Grant Street.

Q. And that is more than a fourth of a mile or better?

A. Yes, sir.

Q. Those cars of copper were on the track almost at the property line?

A. Yes, sir.

[fol. 291] Q. Did the locomotive proceed on up in that direction?

A. We came on in that direction until we got to the group of people in the picket line.

Mr. Adair: I would like to object to this line of inquiry. I presume it had something to do with interference of moving copper. If so, it bears no relation or connection so far with the issue in this case. This case has to do with whether or not Mr. Paul Russell lost wages which he would have earned in the plant had it not been for the manner in which the picketing was conducted. The incident, evidently, may have something to do with the company and its property, but certainly has nothing to do with the causing of plaintiff to lose wages and being forcibly kept out of the plant and apparently is something that only the company and somebody else would be interested in. For that reason, we object to it and say it is immaterial to this case.

Court: In this case, there is a conspiracy involved, and this may or may not, as the jury may determine, shed light on whether or not there was a conspiracy. Overruled.

Mr. Adair: A conspiracy to do what?

Court: To carry on a strike and prevent people from working.

Mr. Adair: We except.

- Q. Who was driving or operating the locomotive?
- A. Howard Hughes.
- Q. Who is Howard Hughes?
- A. He is general foreman of the maintenance department.
- Q. Was he an employee of Wolverine?
- A. Yes, sir.
- Q. Salaried employee?
- A. Yes, sir.
- Q. Where were you riding on it?
- A. Standing on the right front step.
- Q. Was anyone else on the front step?
- A. John Babis was on the left front step.
- Q. Anybody on the rear?
- A. Charlie Tuck and Ed Pirie.
- Q. Are all those individuals or were they salaried employees out there?
- A. All were and are.
- Q. What happened as you approached the picket line?
- [fol. 292] A. As we came around the bend in sight of the group, we heard cries of "Here they come; get ready." And there was a mass movement over on to the track.
- Q. Mass movement of what?
- A. Men in the picket line and the group assembled there. They got on the track. In fact, one woman sat on the track.
- Q. Who was the woman?
- A. She has been called by name "Mrs. Hovis". I never met the lady and don't know her, but I have seen her with Hovis and heard her called Mrs. Hovis.
- Q. What did she do?
- A. She simply sat on the railroad track in our path.
- Q. How close did you come to Mrs. Hovis?
- A. I guess the closest we got to her was about five feet; because the group stood solidly across the track. Hughes attempted to ease up until actually one of the picket signs held by Hovis was pushing against my chest.
- Q. "Mr. Hughes". Do you refer to Howard Hughes driving the locomotive?
- A. Yes, sir.

Q. And "Hovis". Do you see Mr. Hovis at that table over there? (indicating defendants' table).

A. Yes, sir.

Q. He had his picket sign pushing against your chest?

A. He had been standing there, and we moved into him. We were pushing against each other.

Q. Did the locomotive then stop?

A. Yes.

Q. Tell the jury what you then saw.

A. The first thing, I heard a commotion and looked back over my shoulder, and Webster (indicating), sitting over there—

Q. Ralph Webster?

A. Yes—had jumped into the back and had grabbed the locomotive key and threw it out into the grass.

Q. You spoke of a locomotive key. Does that locomotive have an ignition switch like an automobile?

A. Not exactly, but similar.

Q. It worked on the same principle?

A. Yes, sir.

[fol. 293] Q. You have to turn that switch for the engine of the locomotive to run; is that right?

A. Yes, sir. I have now learned the locomotive can run without the key once it is unlocked; however, we did not know that at that time and thought that was it.

Q. Was the key turned and the motor stopped?

A. The motor stopped.

Q. What did Webster do with the key?

A. He threw it into the grass toward the crowd.

Q. What happened to them then?

A. I never saw them again.

Q. Did you see anybody pick them up?

A. No, sir.

Q. Tell the jury what you saw next.

A. We were stopped; couldn't move. Howard Hughes come back to get a spare key and the crowd backed off about 200 feet. Babis and I stood on the front. The first thing, I sensed a noise to the rear and I looked over my shoulder at the side door to the engine department, and I could see a leg back there. Police officer, Mr. Collier, called to him and he jumped down, and Ralph Webster backed out

and ran back into the crowd from that side of the locomotive. When I went back and looked inside, there are four spark plug terminals, and three of the spark plug terminals had been pulled aloose and the other cut. I held the wires up and told Collier, "Look what he's done." Three people hollered, "Cornell cut them; I saw him." I said, "How could I do it?" They asked if I saw him cut them and I said "no". They detained him a few moments, and then turned him loose.

Q. That was police officer Collier?

A. Yes, sir.

Q. How many officers were there at that time?

A. Three to my best recollection.

Q. How many were in that crowd that surged around?

A. I would guess between 40 and 50.

Q. At that time?

A. Yes, sir. Over the next hour and a half, it swelled to pretty close to 100.

Q. You saw Webster leaning in there? Is that the motor compartment?

A. That is the engine compartment.

Q. The engine, of course, would not operate with the spark plug terminals torn out?

[fol. 294] A. That is correct.

Q. What else did you observe?

A. In general?

Q. Tell the jury what happened and what you heard.

A. Right after that happened, since we saw we could not move until we repaired that, I left and walked back to the gate house to get the electrician, by that I mean the supervisor, to come out and repair the locomotive so we could do whatever we were allowed to do later. While down there, we didn't speak to anyone on the picket line, but there was one man, Kirkpatrick, who was very abusive to Babis (who was Kirkpatrick's foreman). He did that by saying something, "Why did you have to some down from the North and do that to us, but that is alright; we can take care of that at home." About that time John Caddell drove by.

Q. Who was John Caddell?

A. He is an attorney in Decatur who is the attorney for Wolverine.

Q. He was the attorney for Wolverine at that time and still is?

A. Yes, sir.

Q. What happened there?

A: He started in through the picket line in his car, and the picket line stopped him, and then they slowly opened to let him through. As he drove through, one picket with his sign made a beat on the top of the car and he went on through. About that time a man, later identified to me as Tommy Wilson, shouted, "We have got them for unfair labor practices now." A picket was trying to get out of the way and dropped his sign and Mr. Caddell drove over it. We sat around waiting to repair the locomotive, and didn't pay any particular attention to the front or to the side of the locomotive, because the police were there, but after about an hour and a half, reinforcements for the police arrived and they attempted to shove the crowd back so we could get the cars. We did not know the locomotive would not run after it was repaired. They refused to budge. No blows were thrown. But one man shouted, "Get your hand off that gun. Women and children are here." By that time, Chief Whitmire, with his reinforcements (I would guess maybe 20 or 25) attempted to push their way through, and saw they could not without violence. He said, "Do you want me to clear the way? It may mean blood shed." I said, "It is not up to me, Chief. Mr. Blend is back at the gate house." He went to the gate house and talked to Blend and in a few minutes came back out with Austin Crites to repair the dinky or take it back in the yard. At that time the crowd on the picket line seemed happy, and even offered to push us back in, be [fol. 295] cause by that time we had found someone reached in through from the radiator and cut the fan belts and removed the distributor head, and there was no hope of moving.

Q. How many fan belts were there?

A. Either two or three.

Q. And the distributor head was gone?

A. Right.

Q. Would the engine run without them?

A. Absolutely not. So we refused their help of pushing.

There is a slight incline and we got the police to help push and we rolled it back inside the gate and closed the gate and called it a day.

Q. You say some police reinforcements drove up?

A. Yes.

Q. Did you hear anything as they drove up?

A. Yes, there was, "Here they come; get ready." One man ran to the soft drinks, empty cases of soft drinks, and started throwing bottles to different people. I saw him hit one bottle on the ground and break one end off.

Q. What did he do with the other end?

A. He carried it.

Cross examination.

By Mr. Adair:

Q. This altercation that you have described here—do you remember what day that was?

A. On Monday, August 20, 1951.

Q. That was just before the plant reopened?

A. The idea was to get the copper in for reopening.

Q. After you gave notice you intended to reopen?

A. I don't remember the dates on which the notices went out.

Q. It was certainly about the same time you had advertised you were going to resume operations?

A. Yes, sir.

Q. You know Paul Russell, the plaintiff in this case?

A. Yes, sir.

Q. Was he out on that occasion?

A. Out where?

Q. At this dinky where you were on that occasion?

A. Not to my recollection.

Q. What hour of that day was that?

A. Approximately three-thirty in the afternoon when [fol. 296] we first went out. It was about seven o'clock when we finally went in.

Q. That was away from the actual picket line and entrance to the plant?

A. No, right at the picket line. The road and railroad are separated by only 25 or 30 feet.

Q. Where was the dinky in relation to that road itself?

A. Parallel to the road and about, roughly, as far as I am from the jury. That much open space between the road and the railroad track.

Q. What would you estimate that distance?

A. About 20 feet away.

Q. The dinky was not on Railroad Avenue, was it?

A. No, it was on the L. & N. track.

Q. Is the track the one that crosses that avenue?

A. There is one that goes to the north end of that plant. We came from the south end. They join about where the picket line forms. It shows in this picture.

Q. You on the south side of Railroad Avenue?

A. Right.

Q. And Paul Russell wasn't there?

A. Not to my knowledge.

Q. This was after the company had already announced they were going to reopen?

A. I would assume the announcement came out that afternoon.

Q. That was after the petition asking the company to reopen had been delivered to the company?

A. I would say unquestionably.

Q. Was anything said to you on that occasion by any of these pickets that the company was breaking its agreement with the union not to operate as long as the strike lasted?

A. No, I can say there wasn't a lot being said, because we didn't want to get into a discussion. I don't recall anything to that effect.

Q. But up until August 22nd, the salaried employees and management employees were the only ones entering the plant?

A. That is true.

T. H. HUGHES, next witness for the plaintiff, being first duly sworn, testified:

Direct examination.

By Mr. Harris:

[fol. 297] Q. You Mr. T. H. Hughes?

A. Right.

Q. You recall the occasion when you and Mr. Cornell and Mr. Babis and Mr. Pirie were on the diesel locomotive going after cars of copper?

A. Yes, sir.

Q. Were you driving that locomotive?

A. Yes, sir.

Q. Do you remember the date of that?

A. August 20, 1951.

Q. August 20, 1951?

A. Yes, sir.

Q. Mr. Hughes, as you approached these cars of copper on the railroad track, did you stop the engine?

A. Yes, sir.

Q. Were there people in front of you?

A. Yes, sir.

Q. While you were stopped there, state what, if anything, happened with reference to the ignition keys of that locomotive.

A. I drove up and stopped. Someone hollered, "They are trespassing." And then someone said, "Get back, You are trespassing." Somebody said, "We are not trespassing more than they are." Webster, he came around and came in the locomotive cab.

Q. Is that Ralph Webster you speak of?

A. Yes, sir.

Q. What did he do then?

A. He said something to Charlie Tuck on the back of the locomotive, and he come on up into the cab and said to me, "Hughes, you of all people, use to be one of the organization, and come out to pull copper inside." He grabbed the keys and the motor went dead, and he turned around and hollered for somebody to grab the keys and

run, but they couldn't find them. He got out and found the keys.

Q. What did he do with them?

A. He went over to some car and was back in a few minutes.

Q. Did he have the keys?

A. I don't know.

Q. Did you ever see those keys again?

A. No, sir.

Q. Did you examine that locomotive the next day?

A. Yes, sir.

[fol. 298] Q. Tell the jury what the damage done consisted of.

A. Mr. Adair: I object on the ground that it has nothing to do with the case being tried. The allegation is that by means of violence Paul Russell was prevented from going into the plant and earning wages that he would have otherwise earned; what may or may not have happened to this is immaterial on that issue. The conspiracy counted on in the second count of the complaint is on the same theory exactly; that that conspiracy prevent'd Paul Russell from entering the plant and due to that, he was deprived of wages he would have otherwise earned.

Mr. Harris: That is only part of the claim, your Honor.

Court: I understand that everything that happened during the transaction may go before the jury for the purpose of several things; that the jury may determine whether or not this association authorized what was done; whether or not it was done by its agent with authority; and whether or not the whole matter was binding on this association. The history of the transaction goes before the jury. Overruled.

Mr. Adair: We except.

Court: I think the form of that question is bad.

Mr. Harris: I withdraw it and ask this:

Q. Did you examine the locomotive the next day?

A. Yes, sir.

Q. State to the jury the condition in which you found the locomotive.

A. The spark plug wires were cut; the fan belts were cut—

Q. How many fan belts did it have on it?

A. Two.

Q. What else?

A. That's all that was done to it.

Q. What about the distributor head?

A. It was gone.

Q. Gone absolutely?

A. Yes, sir.

Q. What about the air hose?

A. The air hose was cut and thrown away.

Q. What was the condition of the wheels and brakes?

A. All greased with cup grease.

Q. Would the brakes operate in that condition?

[fol. 299] A. No, not to my knowledge it would not,

Q. Did you leave the plant that afternoon?

A. I asked to be excused around six or six-fifteen for the purpose of going home.

Q. Did you leave the plant?

A. I did.

Q. Did you pass through the picket line?

A. Yes, sir.

Q. What happened as you passed through the picket line?

A. They called me names and threw rocks at me.

Q. Hit you?

A. Hit the car.

Cross examination.

By Mr. Adair:

Q. Do you know, Mr. Hughes, whether or not Mr. Michael Volk was out on that occasion?

A. I don't know Mr. Michael Volk.

Q. Do you know anybody who was out on that occasion?

A. You mean at the time I took the locomotive out there?

Q. Yes, sir.

A. To my knowledge, the only ones I can call the name would be Webster and Hovis.

Q. You don't remember anybody else?

A. There was some 60 to 100 people out there.

Q. This was just prior to the plant's reopening?

A. On August 20th, yes, sir.

Q. Do you recall the day the plant reopened?

A. August 23rd.

Court: 22nd, wasn't it?

Witness: 22nd or 23rd.

Q. You know whether or not the company had already sent out letters to the employees they were going to reopen?

A. Not to my knowledge, I don't.

Q. How about an ad in the newspaper?

A. I didn't see it.

Q. You take the Daily, don't you?

A. Yes, sir, but I very seldom read it.

Q. Mr. Hughes, you're maintenance foreman out there?

A. Yes, sir.

[fol. 300] Q. On the day of the strike, July 18, 1951, did you have working under your supervision an employee, James Garth?

A. Colored boy?

Q. That's right.

A. Right.

Q. James H. Burks?

A. Yes, sir.

Q. Marvin Garth?

A. They are colored boys, janitors.

Q. Janitors?

A. Right.

Q. You know whether or not they reported for work on July 18th, on the morning of July 18th at the time of the strike?

A. They come in early at 4:30 in the morning, and I didn't get there until 15 til 8. I don't know whether they showed up that morning or not. They come in to get cleaned up early.

Q. You don't recall talking to them that morning?

A. No, sir, I didn't talk to them.

CHARLIE TUCK, next witness for the plaintiff, being first duly sworn, testified:

Direct examination.

By Mr. Harris:

Q. You are Mr. C. P. Tuck?

A. Yes, sir.

Q. On August 20, 1951 were you on the locomotive at Wolverine that went out to get some cars of copper?

A. Yes, sir.

Q. Where were you on it?

A. On the back end on the right corner.

Q. On the back end on the right corner?

A. Yes, sir.

Q. As you approached those cars of copper, tell the jury what happened, what you saw and heard.

A. Well, when we got within about 50 yards of the cars, we could not move any further because of the number of people in front of the locomotive; and there was some police trying to move the people back.

Q. How many police?

A. I believe two. There might have been more, but I only [fol. 301] recall seeing two. They were not being very successful in moving them back. Finally, one of the boys came around to where I was and spoke to me, not in very favorable terms, and said something and stepped around me into the cab, picked up the car keys and threw them over my head after he made some remark to Hughes.

Q. Who?

A. Webster is his last name; I can't recall the first name.

Q. Do you see him at that table (indicating defendants' table)?

A. Yes, the end boy.

Q. The one on the end?

A. Yes.

Q. What else happened?

A. There was quite a bit of talk and loud voices and uncomplimentary remarks made, and finally Whitmire came out. There was quite a bit of argument and passing of Coca-cola bottles, and words passed, and finally Whitmire asked

one of us—I believe it was Cornell—to go down and talk to Don Blend and see what he wanted to do; if he wanted to try to clear the way or move the car back. They said move the locomotive back into the yard.

Q. Who is Whitmire?

A. Whitmire, Chief of Police.

Q. He was at that time?

A. Yes, sir.

Q. Did you see a man out there whose name you think is Kilpatrick?

A. I don't recall. There was so many out there.

Q. Did you see Mr. Caddell drive by there?

A. He came by. I don't recall the time, but somewhere around 6:30; very slowly and one of the boys hit the car with one of the picket signs which I was told was Kilpatrick. I didn't know Kilpatrick too well.

Cross examination.

By Mr. Adair:

Q. Mr. Tuck, did you come here when the company moved here?

A. I moved from Detroit, yes, sir.

Q. Did you see anybody actually hit out on that occasion?

A. No, I did not.

Q. Mr. Tuck, as a matter of fact this happened on August 20, did it not?

A. Yes, sir.

Q. On August 20th, the company had just announced that day in the newspaper they were going to reopen the plant?

[fol. 302] A. That's right.

Q. It had been closed from July 18th up to that time?

A. Yes, sir.

Q. And did reopen on August 22nd?

A. I believe that is the correct date.

Q. You know Paul Russell?

A. I do.

Q. You see him in the court room?

A. Yes, sir.

Q. Did you see him out there on that occasion?

A. Which occasion?

Q. On the 20th day of August?

A. I don't recall seeing Paul out there.

A. J. BABIS, next witness for the plaintiff, being first duly sworn, testified:

Direct examination.

By Mr. Harris:

Q. Your name Mr. A. J. Babis?

A. Right.

Q. Mr. Babis, on August 20, 1951, in the afternoon, were you on the dinky locomotive of Wolverine Tube that went out to get some cars of copper?

A. Yes, sir.

Q. Where were you riding?

A. I was riding on the front of it.

Q. Which side were you on?

A. On the left side.

Q. Who was on the right side?

A. Bud Cornell.

Q. As you approached the cars of copper, tell the jury what you saw and heard.

A. As we approached the cars, there was a mass out there in front, a mass of people including men and women and several policemen, and we were moving down the track and we got near the line which marked the company property line, and at that time we were met by the mass on the track, and the mass that was on the track there kept us from going any further, and finally the locomotive came to a stand-still. So, in traveling down, as I said before, we came to the mass of people and the locomotive came to a [fol. 303] complete stop at or near the line which marks the end of the company property. We could not move further. The locomotive stopped, and at that time it was quite a lot of confusion. I stood there on the front along with Bud Cornell, and we attempted to make no move at that particular time. You want me to go through this thing?

Q. Y's.

A. During the time I was out there, one of the first things

that developed was the fact that we were trying to learn why we stopped other than the mass of people that were directly in front. In trying to determine why we could not go any further, I found out that the keys had disappeared from the ignition. We being on the front, we did not know exactly who took the keys out but learned sometime later.

Q. Don't tell that.

A. In standing there on the track, at the time Bud Cornell was on the right side and one of the things that developed was in trying to move forward, Howard Hovis was out there on the track with a sign in his hand and he more or less took that sign in this particular motion (indicating straight across his chest) and moved towards Cornell. Another thing was: Someone was running away from the locomotive and the doors were open on the side. At that time—I believe it was Webster—at that time I believe Tommy Wilson was there, and Bud Cornell had the wires in his hand and he was trying to point out that it was Webster that did it and Webster was saying, "No, you did it; you did it." One of the people in that crowd said, "You did it."

Q. Speaking to Cornell?

A. Yes, sir. Cornell was trying to point out Webster did it and the other fellow said, "You have got the wires; you did it." Another thing: That was the fact that the fellow named Kirkpatrick was doing a lot of talking out there and a lot of his remarks were directed towards me as an individual; something in the order of being a "so and so Yankee" and something on the order of "Why did he come down here and that he would meet me somewhere and clean my clock" or something to that effect. Some time later, during this commotion, the additional policemen came around and there was quite a lot of confusion. During that time in the confusion, one of the boys—I believe his name was John Hampton—when it was believed that it was going to be another move to clear the track, he was distributing or throwing pop bottles to other individuals for use.

Q. What was his name?

A. John Hampton. Also, sometime during the course of [fol. 304] that little set-to, John Caddell came through the picket line and in coming through the picket line, he came

very near being near stopped. He was not stopped. He came very near being stopped. In going through, a sign was pushed or hit into his windshield, it scraped over the top and back off his car. He got through, but there were several remarks made regarding he as an individual.

Q. What sort of remarks?

A. About selling out one of the companies here in Decatur for three quarters of a million of which he was attorney. Another remark was made by one of the individuals who said that he had been going to him and using his services and that that was the last that he would cater to him. Another one of the incidents was that this boy, Kirkpatrick; he was doing all the talking. Sometime later he appeared to be in the locomotive. I see him go to the side and I walked back in that general area. He walked over to me and he had a flashlight in one hand and a pop bottle, I believe, in the other. And in a very nice way he told me that, "You know, Babis, you could get yourself killed," but he wasn't too rough about it, not the way he talked in the crowd. That is about the most important things that I saw. I saw many other things that it would be hard for me to tell exactly what I did see.

Cross examination.

By Mr. Adair:

Q. You have a leaderman by the name of Farrell Shipp?

A. Yes, sir.

Q. You do have?

A. Yes, sir.

Q. What is a leaderman?

A. A fellow that is in charge or has a group of people which he more or less steers or leads to do the work.

Q. And Farrell Shipp is a leaderman under you?

A. Yes, sir.

Q. Do you know whether or not around 2 P. M. on the 17th of July, which was the day before the strike, do you know whether or not you stated to Farrell Ship "if the day shift strikes, all must go out. We are not leaving any hourly people in and the gates will be locked to them?"

A. I don't recall making that statement.

Q. Did you say that in substance?

A. I don't recall making such a statement.

Q. Did you issue any similar instruction?

A. I didn't issue any in writing for sure. Whether or not [fol. 305] I made that statement, I don't recall it.

Q. You don't recall whether you made it to Shipp or not?

A. I don't recall whether I made it to Shipp or not.

Q. It is a true statement, is it not?

Mr. Harris: We object to that.

Court: Overruled.

Mr. Harris: We except.

A. Again: I talked to a lot of people in and around work and it was a quite a lot of discussion. As far as whether or not I made that statement to Farrell Shipp, I don't recall whether I did or not.

Q. Irrespective of whether you made the statement or not, it correctly states what you knew was the policy on what would happen?

Mr. Harris: Same objection.

Court: Overruled.

Mr. Harris: We except.

A. The policy?

Court: Was that what you determined upon, you were going to do?

A. He mentioned a lock out of some sort. He also said that I made the statement in case of something about the day shift not coming in, there would be a lock out.

Q. Let's start over. Had you determined or had you been instructed that the company had determined that if the day shift strike "all hourly employees must go out. We are not leaving any hourly rated employees in and the gates will be locked to all but salaried employees"?

Mr. Wilkinson: It is not said he had authority to determine that.

Court: He is an official, I assume.

Mr. Wilkinson: Foreman, if your Honor please.

Court: The court has not ruled because the question is

mixed; involves the company as well as him as an official of the company.

Mr. Adair: I will limit the question to him as an official of the company.

Mr. Harris: We object to that question on the ground it is not shown that this witness has any authority to determine whether or not the gates would be locked or not.

Mr. Adair: I will be glad to reframe it.

Q. Had you received instructions that in the event the day shift strike, all hourly employees would have to go out and that the gates would be locked to all except to salaried or management employees?

[fol. 306] A. If you put it that way, I can say this: There was some discussion but as far as—

Mr. Wilkinson: He asked you if you received any instruction; instruction; direct instruction?

A. I can't answer that truthfully.

Q. Can you answer at all?

A. It is possible that I made a similar statement. It is possible I made a similar statement.

Mr. Wilkinson: We move to exclude that "possibility".

Court: What is your judgment about it, your best recollection and judgment whether you did or not?

A. The day before I did have a discussion as I always have with all the fellows. Whether I talked to Farrell Shipp regarding that, I am not sure and mainly I am not sure because I do have a number of people working for me.

Q. Do you recall making that statement to anybody?

A. I don't remember the exact statement regarding a lock out.

Q. Did you make a statement that meant the same thing?

A. It is entirely possible.

Mr. Wilkinson: We object, if the court please.

Court: I think this witness can be asked this question because of his attitude.

Mr. Wilkinson: Reserve an exception.

Court: Did you say substantially that?

A. My attitude is to try to answer the best I possibly can. As I said before, that making such a statement, it is entirely possible that I did at that time, but the exact wording of it, I don't remember.

Court: You say "entirely possible". Do you mean by that that is your recollection and judgment that you did?

Witness: I am trying to recall. I will go along with that statement. Something was probably said to that effect.

Q. If you say that your best recollection is that you probably stated something to that effect, I will ask you whether or not, in the course of your job, you received those instructions from some official higher up?

A. I could not truthfully say. If I received them, I don't recall who gave them to me.

Q. I am not asking "who". I am asking if you did.

A. If I had made—

Q. Mr. Witness, just answer the question. I am only asking [fol. 307] did you receive those instructions or did you not?

A. If I made the statement to Farrell Shipp, I don't recall whether or not the instructions were given to me regarding that situation.

Q. Where did you get the instructions?

Mr. Wilkinson: We object; that assumes he got some. He said he doesn't recall.

Court: Overruled.

Mr. Wilkinson: Reserve an exception.

A. That is exactly the way I see it.

Q. What exactly do you see?

A. That I don't recall, or whether or not I received those instructions.

Q. Do you know whether or not the company did close the plant down to hourly rated employees until August 22, 1951?

A. The plant was down and as far as I can recall, wasn't any hourly rated employees coming into the plant from the particular dates in question to the time that the go-back-to-work movement was on.

Q. Blend was the head man at that time?

A. Yes, sir.

Q. Oakes was another high official, was he not?

A. Yes, sir.

Q. What is his job?

A. He is head of the Industrial and Public Relations Department.

Q. Did you attend any meetings during that period of time of the management officials where instructions were given by Oakes or Blend or any other top officials about this strike?

A. As far as meetings, not that I don't want to answer the question truthfully, I am trying to think whether we had any particular meeting. As I said, there were some discussions in regard to it.

Q. Where were the discussions held?

A. They might have been held at a lower level to Mr. Blend or Mr. Oakes.

Q. My question was where were they held?

A. I don't recall whether or not they were held. Whether or not specific meetings were called and that is the truth of the thing. I don't remember whether any specific meeting was called for that purpose.

Q. Did Oakes or other top officials of the company advise you of the agreement that the company made with the union on July 17th that the plant would be closed for the duration of the strike to all hourly paid employees?

Mr. Wilkinson: We object; immaterial, irrelevant.
[fol. 308] Court: Overruled.

A. That the plant would be closed—the terminology I am not sure.

Q. Were you advised of that agreement that had been made on the 17th?

A. We were told that there was something in the wind regarding whether or not the plant would operate; whether or not it was closed and the terminology, I don't know.

Q. You are a foreman out there, are you not?

A. Yes, sir.

Q. Have you graduated from high school?

A. No, I never.

Q. Where did you come from? From Detroit?

A. Detroit.

Q. The word "agreement"—do you understand what I mean by agreement?

A. Yes, sir.

Q. I will ask you the question again: Were you advised of an agreement between the union committee and the company that the company would remain closed for the duration of the strike to all hourly paid employees?

A. I was told there would not be any work because of a discussion between the company and the union.

Q. You were told there would not be any work in the plant because of the discussion held between the union and the company on the 17th day of July. Is that correct?

A. I don't recall the exact words or whether or not a meeting or discussion was held regarding that.

Q. You do recall that you were told that that had been, was the understanding between the union and the company? I am not asking when. You were told there was such an agreement, were you not?

A. If I told my boys that, I heard it somewhere.

Mr. Harris: We object to that.

A. I am not too sure.

Mr. Harris: We move to exclude that answer.

Court: I don't think that is an answer. That is out.

Q. What you imagine of course is not any evidence before the jury. Just what do you recall the agreement was, if it was expressed to you?

A. In some cases, we on the lower level do not get the exact terminology of what you want to call the agreement or something that actually takes effect or not. We may be told by our superiors on the level up above us that this is the situation and if this situation is going to exist, the plant is open to people coming in to work as they normally do.

[fol. 309] Q. That is the salaried employees?

A. Right.

Q. What was said about hourly employees?

A. The hourly employees—again, the exact recollection what was said about those people, I can't recall.

Q. It is your recollection, is it not, that they were not to work and that the salaried employees were?

A. It is possible the statement was made this way: They would probably not work.

Q. You may have instructed your leadermen that the gates would be locked to hourly paid employees?

A. I may have said to him "if this situation comes up".

Q. That is the strike?

A. If the people don't come to work.

Q. You remember what you did say?

A. I don't remember exactly.

Q. But you do recall being told about some agreement between the union and the company? You don't remember the details?

A. No, I don't remember.

Q. You do remember the agreement?

A. I remember the discussion, "if they don't come to work, this is what we are going to do".

Q. What was the thing you were going to do?

A. The work day would end at eight o'clock, which it normally does, and that we would go about our business of getting everything in readiness if this thing—if they did not come to work. I am guessing at some of this. "If the people come to work, we have certain things we are going to do."

Q. Tell the jury what you know.

A. Alright. I don't recall it.

Q. You know, as a matter of fact, do you not, that hourly employees did not come in and they did not work from the period of July 18th to August 22nd?

A. Right.

Q. Do you recall there was a petition delivered to the company asking the company to reopen?

A. I never saw it. I recall a discussion about it.

Q. Do you recall about the time the petition was delivered to the company that the company ran a newspaper advertisement, full page, announcing that the company would [fol. 310] resume operations on August 22nd and asking hourly employees to report?

A. Those things I know.

Q. That did happen?

A. That is right.

Re-direct examination.

By Mr. Harris:

Q. Mr. Babis, what was the name of that leaderman Mr. Adair was asking about?

A. Farrell Shipp.

Q. Do you recall having any conversation with Shipp along that time?

A. I have conversations with all of those boys, and I talk with him half of the time.

Q. Let me ask it this way: Do you recall having any conversation with Farrell Shipp along about July 18th as to whether or not the hourly paid employees would work in the plant? Do you recall having it?

A. As far as remembering, no.

Q. Alright you answered my question.

A. —Regarding that specific thing.

Q. Yes. Did you have any authority to determine whether or not hourly paid employees would work at the plant?

A. No, I don't have that authority.

Q. You didn't have that authority?

A. No.

Q. Who did have that authority?

A. Those up in the higher level.

Q. Blend?

A. Yes, sir.

Q. Blend the head man?

A. Yes, sir.

Q. Blend was the man to determine whether or not the plant operated?

A. Right.

Re-cross examination.

By Mr. Adair:

Q. You say you did not have any authority to determine these matters, but is it not true that a lot of matters of

the policy are determined and that the word is passed down to the foremen so you can instruct the leadermen and employees as to company policy?

A. That is right.

[fol. 311] Monday, June 8, 1953.

N. F. WEBSTER, next witness for the plaintiff, being first duly sworn, testified:

Direct examination.

By Mr. Wilkinson:

Q. Mr. Webster, are you employed out at the copper plant?

A. Yes, sir.

Q. In what capacity?

A. Plant Protection.

Q. You a gate man out there?

A. Yes, sir.

Q. Were you a gate man on July 18, 1951?

A. Yes, sir.

Q. How long have you been in that capacity out there?

A. Ever since April 26, 1948.

Q. Been out there about five years?

A. Something over five years.

Q. Were you on duty on July 18, 1951?

A. I come on duty at 11:30 on the 17th of July and worked on to 8:30 on the 18th.

Q. 11:30 P.M. the night of the 17th?

A. Yes, sir.

Q. And worked until 8:30 the morning of the 18th?

A. That's right.

Q. How far approximately is the gate that you had charge of from the place where the pickets were assembled out there?

A. I would say around 400 feet.

Q. Around 400 feet?

A. Yes, sir.

Q. I wish you would tell the jury whether or not you

received any orders or instructions, oral or written, from any source not to admit any employees to the plant on the morning of the 18th?

A. We didn't have any orders, only the orders we always carried.

Q. Were your gates locked on the morning of the 18th against any employee?

A. No, sir.

Q. Was any employee appeared for admission on the morning of the 18th?

A. Yes, they was.

[fol. 312] Q. During the five year period that you have been employed in that capacity in that plant, if there is a shut down or a cessation or stoppage of work from any cause, shortage of material or holiday or anything of that kind, what was the practice and custom up to that time with reference to notifying the gateman?

A. I think the Public Relations Department posted a notice on the bulletin board.

Q. That there would not be work at a certain time?

A. Yes, sir.

Q. Was that notice given in advance?

A. Yes, sir.

Q. Was anything put on the board on this occasion?

A. No, sir, there wasn't.

Cross examination.

By Mr. Adair:

Q. You say you didn't have any instructions from the company on the morning of the 18th about not admitting employees. Now did you receive such instructions after that?

A. No, sir, we didn't.

Q. Mr. Webster, what time did you come to work of a day after the 18th?

A. I come back to work the following night at 11:30.

Q. Did you have a salaried employees' I.D. card?

A. Yes, sir.

Q. Did Mr. Oakes have a conversation with you about the manner in which you had allegedly come through the

picket line and did he instruct you to show your salaried employees' pass at the picket line?

A. No, sir he did not.

Q. Did he talk to you about the matter?

A. No, sir, he did not.

Q. Did you show your salaried employees pass?

A. Someone on the picket line made me show it before I could get through.

Q. Mr. Webster, you had employees to come down from the gate house and some to go in and get tools?

A. Yes, sir.

Q. What did you do when they came down there?

A. We always called Ed Bowden. He was the man in charge, and he would take charge and get the tools.

[fol. 313] Q. You would have them remain at the gate house while the tools were sent for?

A. Not every time. I think some of them went and got theirs.

Q. When they came and got the tools, that employee was requested to remain and the tools were sent for?

A. No, sir. Every time I was there, they went with Ed Bowden and went over to where the tools was and got the tools.

Q. Who do you remember that did that?

A. Kenneth Sneed was one I remember in particular.

Q. When was that?

A. I just couldn't tell you what day it was.

Q. First day of the strike?

A. Several days after the strike.

Q. Was it before or after August 22nd?

A. It was after August 22nd.

Mr. Adair: I ask that the witness' reply to the previous question about going and getting the tools, that the man went with Ed Bowden, be stricken from the record, on the grounds he stated it was sometime later than the period of the complaint.

Court: Sustained. That is out. Don't consider that.

Q. Can you name anybody who came to get tools at the gate there between the period of July 18th and August 22nd?

A. No, sir, I can't.

Q. You know a good many did, don't you?

A. I wasn't there all the time; I was on rotating shift and I wasn't there every day.

Q. I am asking whether or not you knew a good many did come there?

A. I couldn't tell.

Q. You deny they did?

Mr. Wilkinson: We object to whether he denies it or not.

Court: Sustained.

Q. Mr. Webster, you say you were not there all the time. Did employees come to the gate to get tools while you were there during the period of July 18th to August 22nd?

A. I would not say for sure, but I don't think anybody asked for tools until after August 22nd. I would not be too for sure about it.

Q. Did they come to the gate and ask to get in for the purpose of going to the dispensary or to the nurse on some occasion?

A. No, sir, not that I know of.

[fol. 314] Q. You there during the day time?

A. Not all the time.

Q. How much of the time?

A. We worked six days on one shift and off two days and come back on a different shift.

Q. The first six days was on day shift?

A. I was on third shift when the strike happened, but I don't remember how long.

Q. That would be from 12 to 8 in the morning?

A. Yes, sir.

Q. During that period of time, wasn't anybody coming in the plant?

A. Salaried employees.

Q. They were all?

A. All I know of.

Q. All that appeared and asked for admittance to the plant at the gate?

A. Yes, sir.

Q. You stayed on duty to 8:30 on the morning of the 18th?

A. Yes, sir.

Q. Who else was on duty there?

A. Herman Windsor.

Q. Herman Windsor?

A. Yes, sir.

Q. You know Rufe Ellis?

A. Who?

Q. Rufe Ellis.

A. I know Versie Ellis only Ellis I know out there.

Q. You know whether or not on the morning of July 18th at or around eight o'clock in the morning, Mr. Rufe Ellis—

A. I don't know Rufe Ellis.

Q. —or any other employee came to the gate and asked for admittance and was told at the gate that he could not get in because he was an hourly employee?

A. I can tell you wasn't a hourly man to that gate until 8:30, I can tell you.

Q. You on all the time?

A. Yes, sir.

Q. You didn't go in the guard shack?

A. You can sit out front anywhere you want to and see there.

[fol. 315] Q. If you had been in the guard house, would you have seen a man at the gate?

A. Yes, sir, from any angle.

Q. You say no employees showed up there?

A. No hourly employee showed up at that gate whatsoever.

Q. Did you receive any orders or instructions from the management of the company concerning the manner in which you were to handle the gate?

A. No, sir, I didn't.

Q. You decide that yourself?

A. We worked on the orders we worked on ever since we started to work there. We had no change in the orders at all.

Q. Previous to the strike, is it not true that about shift

time in the morning, you would open the gate and the gate would remain open until the entire shift got in?

A. No, sir.

Q. You deny that?

A. The gate—when a man come up to the gate, we opened the gate and checked his identification.

Q. Let them in one at a time and closed the gate?

A. If nobody else was behind him.

Q. I am talking about before the strike.

A. That's right.

Q. Is it not true, as a matter of fact, the gate was usually open most of the time prior to the strike.

A. No, sir. No, sir.

Q. And as I understand your testimony, that you closed the gate behind each employee entering, unless there was somebody immediately behind him?

A. That's right.

Q. Do you testify that the gate was operated exactly the same during the strike as before the strike?

A. Yes, sir.

Q. You still working out there?

A. Yes, sir.

Q. Were you called into a conference at the time the strike took place, either just before or after, when Oakes and some of the management people—

A. Mr. Oakes never said a word in the world how to operate that gate. We got instructions from P. W. Robson.

Q. What did he say?

A. He never changed the orders, either written or verbal [fol. 316] Q. Did he talk to you?

A. No, sir.

Q. Did Blend, the Plant Manager, ever come down and talk to you?

A. No, sir.

Q. Did you ever see him at the gate house during the strike?

A. During the strike, I couldn't say; I've seen him at the gate house lots of times.

Q. But during the strike, you don't remember?

A. I don't remember.

Q. Did any of the management people talk to you about the strike?

A. No, sir.

Q. You mean they didn't say anything at all to you about it?

A. I would not say there was a word mentioned.

Q. What was mentioned?

A. Whatever was mentioned was too far back for me to call what was mentioned.

Q. You don't recall what they said to you?

A. If anything was said, that's right.

Q. Are you sure they didn't talk to you?

A. I have told you two or three times they didn't.

Q. I understood you to say a moment ago they may have talked to you about the strike?

Court: Did you or not?

A. I will say like I said a while ago: if anything was ever mentioned about it, I don't remember it.

Q. You don't remember what was mentioned if it was mentioned?

A. That's right.

Q. You don't remember any instructions issued in connection with the strike?

A. We didn't have any instructions.

Q. When you said "we", you talking about the guards?

A. Talking about myself.

Q. You don't know whether or not Herman Windsor had any instructions?

A. No, sir, I don't know nothing about his business.

Q. Who was in charge at the gate?

A. P. W. Robson was in charge of the guards.

Q. If two guards were on the gate at the same time, was one of them in charge?

A. No, sir.

[fol. 317] Q. Have equal authority?

A. Yes, sir.

PLAINTIFF RESTS

Mr. Goldthwaite: The defendants would like to make a motion.

(Jury is taken out)

MOTION TO EXCLUDE PLAINTIFF'S EVIDENCE
AND DENIAL THEREOF

Mr. Goldthwaite: At this time we would like to make, in behalf of the defendants, a motion to exclude the evidence of the plaintiff for the reason that the plaintiff has failed to prove an essential element of the case, an allegation—

Mr. Wilkinson: We object to a consideration of a motion to exclude. If they want to rest and ask the affirmative charge, that is their privilege to do so. The Supreme Court has said that you are not required to prove every allegation.

Court: It has said both ways, Judge.

Mr. Wilkinson: We except.

Mr. Goldthwaite: The plaintiff alleges in Count 1 that the alleged violence and threatening picketing of the defendants cause the plaintiff to lose earnings from his employment at said plant—here is the material portion—which he would have received had he not been prevented as aforesaid from going to and from said plant. And in Count 2, the plaintiff alleges that as a proximate consequence of the alleged wrongful picketing, plaintiff lost much time from his work and lost earnings from his employment which he would have received had he not been prevented as aforesaid from entering said plant. Our motion is that the plaintiff has utterly failed to prove that he would have received any earnings, except from the facts shown in the evidence and to the contrary, plaintiff has affirmatively proven that the plant was closed.

Court: I think it is a jury question. Overrule the motion.

Mr. Goldthwaite: We except.

(Jury is returned)

OLAN B. DRAKE, first witness for the Defendants, being first duly sworn, testified?

Direct examination.

[fol. 318] By Mr. Adair:

Q. Is your name Mr. Olan B. Drake?

A. That's right.

- Q. Mr. Drake, you live in Decatur, Alabama?
- A. That's right.
- Q. Your family live here in Decatur?
- A. Yes, sir.
- Q. How long have you lived here?
- A. Twenty years, approximately.
- Q. Were you an employee of the copper company on the 17th day of July, 1951?
- A. I was.
- Q. Were you active in the negotiations with the company working toward getting a contract?
- A. I was.
- Q. What position did you hold, if any?
- A. I was on what we call the temporary negotiating committee.
- Q. Just what did that committee do?
- A. That committee met with the company committee to try to negotiate a contract between the company and the union.
- Q. There had been an election out there?
- A. There had been.
- Q. What was the nature of that?
- A. The union won the election and was certified.
- Q. They were certified?
- A. Yes, sir.
- Q. Did it bargain with the company after that?
- A. That's right.
- Q. You recall how many employees were on the committee?
- A. Five.
- Q. The negotiating committee?
- A. Yes, sir.
- Q. Was there any other representative of the union that assisted the committee?
- A. Mr. Duncan.
- Q. Who is he?
- A. He is the Assistant Regional Director of Region 8, UAW, CIO.
- Q. Did he sit in with you?
- A. He was the spokesman.
- [fol. 319] Q. What was your job at the plant?

A. Crane operator.

Q. How long have you been working out there?

A. Approximately three years.

Q. Did you go to work when it first opened?

A. I believe I went to work the 20th day of September, 1948.

Q. Mr. Drake, on July 17, 1951, the day before the strike, was there a meeting of the employees of the Wolverine Tube Company held at the Union Hall?

A. There was.

Q. You recall what time of day the meeting was held?

A. 1 o'clock.

Q. 1 o'clock in the afternoon?

A. That's right.

Q. Do you remember who attended that meeting?

A. All of the second shift.

Q. What hours did they work?

A. From four in the afternoon until twelve at night.

Q. It was just the second shift at that meeting?

A. Yes, sir.

Q. You at the meeting?

A. Yes, sir.

Q. Were the rest of the employees committee at the meeting?

A. They were.

Q. Mr. Duncan at the meeting?

A. Yes, sir.

Q. Will you tell the jury what transpired at that meeting?

A. Well, the purpose of this meeting was to give a report on what had gone on in negotiations up until that date. Each one of the committee and also Mr. Duncan made report as to the standing of the negotiations up until that date. We told them as to what had gone on in negotiations, and we recommended that the plant be struck at eight o'clock the next morning, and they voted unanimous to do so.

Q. You said "they". Do you have any idea how many voted at that meeting?

A. I would say 150 approximately.

Q. That is at one o'clock?

A. That's right.

Q. What action did your employee committee take following that meeting?

[fol. 320] A. Following that meeting, it was decided that Mr. Duncan would call Mr. Oakes and arrange a meeting with them.

Q. Who is Mr. Oakes?

A. Oakes was handling negotiations for Wolverine.

Q. For the company?

A. Yes, sir. And so he made arrangements and the negotiations started at approximately 3 o'clock in the afternoon.

Q. What was that that started at 3?

A. The negotiations—we reported to Duncan as to what the union had decided?

Q. To Mr. "Oakes"?

A. I said Mr. Duncan; I meant Oakes.

Q. Was there such a meeting held with Mr. Oakes?

A. There was.

Q. Where was it held?

A. At the guard shack, I believe they call it the conference room.

Q. Just inside the gate?

A. Yes, sir.

Q. You remember who was present at the conference for the company?

A. Mr. Oakes and Mr. Kromer and Mr.—the guy in charge of the engineering department.

Q. You remember how many there were for the company?

A. Three.

Q. Was that man Mr. Robson?

A. That's right.

Q. You remember who was present for the union?

A. For the union, there was Duncan, Norman Ange, Howard Hovis, Pete Runager and Clyde Bradshaw.

Q. Were you also there?

A. I was there.

Q. There was five people named other than Duncan. Were they all employees of the company?

A. That's right.

Q. What transpired at that meeting?

A. We went in to report to Mr. Oakes what had gone on at the meeting that afternoon, and Mr. Duncan was our spokesman, and he told Mr. Oakes that our purpose there was to

inform the company that if the other two shifts voted as the first meeting had voted that afternoon, the company would be struck at eight the next morning. And then he [fol. 321] asked Mr. Oakes if there was any maintenance men or any key men he needed to operate the machinery that might be damaged due to nobody being there to watch it or any safety precautions to be taken to watch after the machinery in the plant. Oakes said, "No, we won't need any hourly rated employees. The plant will be closed to all hourly employees, and our salaried employees are fully capable of taking care of any situation that might arise inside the plant."

Q. Did he give any reason for not wanting the hourly employees?

A. He explained the reason, that the company would not do that because if part of the people were allowed to go in that it might cause hard feelings between the boys that went out with the union and the ones in, and in the near future we would all be having to work together and he didn't want any confusion and hard feelings, and for that reason he would rather close the plant down to all salaried employees.

Q. What kind of employees?

A. Hourly rated employees.

Q. Do you recall whether or not Mr. Robson had anything to say at that time?

A. Mr. Oakes turned to Mr. Robson at that time. There were lean-to shacks being built on to the plant, and they were union people also, and—

Q. Were they employees of the company, the people building the lean-tos?

A. They were, I believe, Stone Lumber Company, that built those.

Q. Some outside contractor?

A. Yes, sir. He said, "No, that situation has already been taken care of. I have talked to the foreman of this job and he said since they were union men, they would not enter the plant either."

Q. Did the meeting break up about that point?

A. It did.

Q. I understand this occurred about three in the afternoon?

A. Approximately three on the 17th.

Q. You have any idea how long it lasted?

A. I would say around thirty minutes.

Q. What did the committee do then?

A. The committee came back to the Union Hall and made report to the third and first shifts who were at the meeting at four o'clock. Of course, it was a few minutes after four before the meeting started, and Duncan gave them a report of the remarks Oakes made at the meeting that afternoon, that the plant would be closed to all hourly rated employees, and also we explained to that group what had gone on in negotiations up to that date, and they [fol. 322] also voted to unanimous shut the plant down, strike the plant.

Q. Q. This was a second meeting held the same day?

A. That's right.

Q. About four?

A. Approximately four that afternoon.

Q. Do you know whether or not Mr. Starling, whose name has been mentioned here, addressed that meeting?

A. He did.

Q. Who is he?

A. Regional Director for Region 8.

Q. Do you recall what instructions he gave?

A. He emphasized—

Mr. Wilkinson: We object to that "emphasized".

Court: Just say what he said.

A. He said that he did not want any trouble on the picket line; that the picket line—"that whiskey and picket lines don't mix; that no drinking would go on; that we are going to picket peacefully and don't want any trouble. We want it carried on clean and like gentlemen."

Q. Mr. Drake, was the picket line set up the following morning?

A. It was.

Q. Were you there?

A. I was.

Q. Do you know the plaintiff, Paul Russell?

A. I have seen him at the plant.

Q. Did you know him at that time?

A. Not personally.

Q. Do you or do you not recall him coming up to the picket line or the vicinity of the picket line?

A. I do.

Q. Were you there?

A. I was.

Q. You observed him yourself?

A. I saw him.

Q. Will you tell the jury what happened as you saw it.

A. As he drove up, he stopped some distance from the picket line, I would say in 30 or maybe 50 feet of the picket line. And when I saw him, Brother Hovis was talking to him.

Q. Who is Hovis?

A. Howard Hovis. He was leaning with his arm in the [fol. 323] door talking to him.

Q. How close were you to them?

A. I was in 20 feet, out to the side of the road.

Q. What manner were they talking?

A. They seemed to be having an ordinary conversation to me.

Q. Did anything happen then to attract your attention?

A. Only thing, right after they were talking, I noticed that Russell started up and pulled down toward the picket line, and it looked as Hovis kindly grabbed the car to keep from falling back.

Mr. Wilkinson: We move to exclude that statement.

Court: That would be a conclusion. Just state the facts.

Q. I think you have already testified. Tell us just how Hovis was standing at the plaintiff's car when you first saw him?

A. He was standing with his elbow up in the window talking.

Q. When you saw the plaintiff start up his car and start off, did the defendant, Mr. Hovis, still have his elbow in the window?

A. He had it when he first started off and grabbed with his hand to keep from falling back.

Mr. Wilkinson: We move to exclude "to keep from falling back".

Court: That's out.

Q. What happened?

A. He drove on within 10 or 15 feet of the picket line and stopped again.

Q. What did you observe then, if anything?

A. I didn't notice. I just saw him sitting there. Outside of that, I was busy fixing up a picket captain for the second shift, and what conversation or anything that went on, I didn't notice.

Q. Did you notice when the plaintiff left or not?

A. I didn't. I didn't pay any attention.

Q. Did you personally notice anybody else taking to Russell?

A. No, I didn't.

Q. Other than Hovis?

A. I just saw him and Hovis when he first drove up.

Q. Were you out on the picket line fairly regularly?

A. I was.

Q. You were out on the 18th?

A. I was.

Q. You were out after the 18th?

A. I was.

[fol. 324] Q. Did you have any particular assignment in connection with the pickets?

A. I was helping make out the picket captains and men to walk and what time to walk.

Q. That a schedule?

A. Picket schedule, yes, sir.

Q. Mr. Drake, could you tell us just in what manner the picketing was done, the actual picketing?

A. We usually had five men to the shift that would walk thirty minutes and five men to take their place; and had a small circle they circled around in. I would say there was three or four yards space between each picket; just ordinary pacing around and around.

Q. Were there any instructions issued to the pickets to your knowledge on the morning of the 18th about how to identify salaried employees?

A. On the 18th, I remember Mr. Oakes stopped at the picket line and was talking to Mr. Duncan and he informed him that all salaried employees could be identified by a card. I believe this card had a picture and their name on

the card, and he also told that the number on the card went from two to four thousand, and that the salaried employees would show their card, stop and show their card, and go on in.

Q. Was that instruction transmitted to the pickets?

A. That's right; it was.

Q. Did you see Mr. Oakes talking to Mr. Duncan?

A. I did.

Q. You know what time of morning that was?

A. I would say that was approximately 7:30.

Q. You were out there on the first shift picketing mostly?

A. I was.

Q. Will you tell us how it was determined what time of day the various pickets would report out there?

A. The first shift was to report each morning after the first morning at eight o'clock. The second shift was to report at four in the afternoon and the third report at twelve midnight.

Q. You mean they picketed on the same hours they would have worked?

A. That's right.

Q. Prior to the strike?

A. That's right.

Q. After the 18th and as time went along, did you use more or less pickets?

[fol. 325] A. Used less.

Q. How did you account for that?

A. Mr. Wilkinson: We object to that.

Mr. Adair: I withdraw it.

Q. On the morning of the 18th, do you know whether or not, of your own knowledge, there were people out there on both sides of the street, some people other than employees of the company?

A. There was. There was a large crowd of people besides the employees.

Q. You know who they were or where they came from?

A. I imagine from all over the county. They were lined up from the picket line down to the Universal Concrete Pipe, people up and down the road.

Q. Lot of people on both sides of the street?

A. There was.

Q. Mr. Russell was sitting in his car at the picket line. While he was there, did you hear any outcry from anywhere?

A. I heard some of the guys hollering occasionally. There was a lot of racket, but as to who it was, I don't know.

Q. Do you recall any particular thing you heard?

A. Nothing out of the ordinary.

Q. Do you remember anything, any outcry you may have heard?

A. No, I don't.

Q. Did you see anybody try to strike or hit the plaintiff?

A. I did not.

Q. Did you see anybody attempt to turn his car over?

A. No.

Q. Did you hear any loud talk, yelling at his car?

A. I did not.

Q. Hear any argument at his car?

A. I did not.

Q. Mr. Drake, in the opening argument, counsel on the other side made a statement that these defendants were paid agents of the International Union. Were you paid anything by the union?

A. I have not.

Q. Do you know anybody who was paid anything?

A. I do not.

Q. During the strike, there is testimony in the record about money being spent. Did you have anything to do with furnishing supplies to strikers?

[fol. 326] A. I did.

Q. Well, will you tell the jury just what that was?

A. At the time the company paid so much—the union paid so much each week and they put up what we call a commissary. This commissary, we bought food from Brock & Spight and other concerns in town; and one day a week people would come out and they were furnished groceries which was paid for by the union. Each one would get so much, according to the size of his family.

Q. Mr. Drake, did you ever pass out any money to anybody?

A. No.

Q. You one who helped pass out groceries?

A. I was.

Q. Was anything other than groceries that you know of ever passed out?

A. House rent was paid for the boys.

Q. House rent?

A. That's right.

Q. Mr. Drake, what kind of dues were you paying to the union?

A. Not any.

Q. Was anybody paying dues?

A. They were not.

Q. Did you pay any initiation fee?

A. \$1.00.

Q. \$1.00?

A. Yes, sir.

Q. Actually, the union started organizing out at that plant back in 1949, did they not?

A. That's right.

Q. At the time of the strike in July, 1951, what was the total amount you had paid to the union?

A. \$1.00.

Q. Is that true of all other employees who were in the union?

A. That's right.

Q. What had you been told about dues?

Mr. Wilkinson: We object to what he had been told about dues.

Court: Sustained.

Mr. Adair: I withdraw it.

Q. Mr. Drake, we have had some testimony about an incident on August 20. On August 20th do you know whether or not the company had announced they were going to re-open?

[fol. 327] A. They had.

Q. When had they announced it?

A. They announced it in the paper.

Q. Do you know whether it was that day or not?

A. It was around the 20th of August.

Q. Were you present at or near the vicinity of the

picket line on August 20th after the company had announced they were going to reopen, when they brought a dinky switch engine out of the plant?

A. I was.

Q. Tell the jury what occurred.

A. At that time the International Representative—there were none near the picket line at that time. He was out of town.

Q. Were they in town of your knowledge?

A. They were not. They were to be in town within a couple of hours. And there were policemen out there when they brought the dinky out. We were picketing on the railroad track between the cars and the dinky, and I was acting as spokesman at that time, and I went out and talked to Whitmire who was Chief of Police. I told him—he said, "What steps are you going to take here?" I said, "I don't know. These boys are new at this. We don't know. But we wish what you would do until we find out more about it, forget this thing until our men come in, and we can settle this thing without any trouble." I said, "We don't know anything to do except wait until they come in." He walked off and in a few minutes he came back and said "O.K."

Q. When you and Whitmire had this conversation, did he call you out of the crowd to do the talking or did he talk to you around the people?

A. He called me out in front.

Q. Were you and Chief Whitmire in plain sight of the other people?

A. We were.

Q. And Chief Whitmire left the premises after your understanding was reached?

A. He did.

Q. Did you get in touch with your International Representative about whether or not you had a right to keep the switch engine from coming out?

Mr. Wilkinson: We object, that calls for hearsay.

Court: He can say whether or not he got in touch with him.

A. After Mr. Duncan came in, I explained to him what happened.

Mr. Harris: We object because that's hearsay.

Court: For the present, I'll overrule it.

[fol. 328] Mr. Harris: Except.

A. At that time I explained to Duncan what had taken place at the dinky incident, and between that time when I saw Duncan, the railroad company had come out and moved these cars that were on the track and moved them, I understand, back down in the railroad yards, and they had pushed the dinky back inside the plant, so he said—

Mr. Wilkinson: We object to that—hearsay.

Mr. Adair: We don't insist on it.

Court: I am not going to admit the question.

Mr. Adair: Don't go into that, Mr. Drake.

Q. You testified they had come and got the cars and they were no longer there?

A. That's right.

Q. Did they bring the dinky out again to your knowledge?

A. Not to my knowledge.

Cross examination.

By Mr. Wilkinson:

Q. You said you had a conversation with Chief Whitmire out there on the afternoon this incident occurred in which the dinky engine was involved?

A. I did.

Q. Did Chief Whitmire tell you or any of your men to go out and cut the air hose on that engine?

A. He did not.

Q. To take the distributor head off?

A. He did not.

Q. Did he tell you—did he tell Webster to take the distributor head off?

A. He did not.

Q. Did he tell you or your men to disconnect the spark plug terminals?

A. As far as that is concerned—

Q. Did he? Did Chief Whitmire tell you or any of your men in your presence to disconnect the spark plug terminals and destroy the dinky?

A. He did not.

Q. Did you tell him that happened?

A. I did not.

Q. All that happened before the conversation?

A. As far as knowing that happened, I don't know that happened.

Q. You didn't know it happened like that?

[fol. 329] A. No, I didn't.

Q. All of the disorder with reference to the dinky had occurred before you talked to Whitmire, hadn't it?

A. Whether anything happened to the dinky, I didn't know it.

Q. You were right there?

A. I was talking to Chief Whitmire.

Q. You were in 20 or 30 feet of the dinky?

A. I would say.

Q. Was there any disorder there or not?

A. To my knowledge, no.

Q. You didn't see anybody, any of your men, get on the dinky?

A. No.

Q. Didn't see Mrs. Hovis get on the railroad track?

A. I saw her on the railroad track.

Q. How many men, people did you see on the railroad track?

A. I would say there was 15 or 20.

Q. You didn't see anybody disconnect the spark plug terminals?

A. I did not.

Q. Disturb the engine in any way?

A. I did not.

Q. Looking right at it all the time?

A. I was not.

Q. What were you looking at?

A. Looking at the police and talking to Whitmire.

Q. That was after anything happened to the dinky, wasn't it?

A. It was during the time probably if it happened.

Q. Did you have your back to the dinky?

A. I did.

Q. When the trouble started, you turned your back to the dinky so you couldn't see what happened?

Mr. Adair: We object to his arguing with the witness.

Court: That is argument:

Q. Did you turn your back?

A. I walked over and turned to Whitmire. The dinky was sitting here (indicating) and I walked out here.

Q. You turned your back, did you?

A. The dinky was back of me.

Q. You can't tell the Judge whether you turned your back at that time?

A. I didn't see anything.

[fol. 330] Q. Didn't hear anything?

A. No.

Q. Didn't hear anybody crying out, and making any remarks, anything?

A. No.

Q. Didn't hear one of your men tell a fellow he could be killed by coming out on that occasion?

A. No.

Q. You didn't hear or see anything that would reflect on the union in any way?

A. I heard argument.

Q. You didn't hear anything or see anything that would reflect on the union?

A. No.

Q. You didn't?

A. No.

Q. Under the laws of your union, if you testified to anything that reflected against it, you could be turned out. Isn't that true:

Mr. Adair: We object.

Court: Overruled.

A. That, I don't know.

Q. Don't you know it is a part of the union law that a member cannot make a statement under oath or not under oath that reflects on the union?

Mr. Adair: I object. There is nothing in evidence whatsoever that substantiates that unfair question.

Mr. Wilkinson: I am asking this witness.

Q. How long have you belonged to the union?

A. I would not say I belong, because we have never had a charter.

Q. You signed up an application to it?

A. Yes, sir.

Q. How long have you been signed up?

A. I would say I have been signed up approximately three to six months.

Q. You were the man who had the roster of the pickets?

A. For the second shift.

Q. For the second shift?

A. Yes, sir.

Q. You attended all union meetings held here?

A. I did.

[fol. 331] Q. Let me get the different officials straight.
M. E. Duncan?

A. Assistant Regional Director of Region 8.

Q. Is Decatur in Region 8?

A. It is.

Q. Then he was Assistant Regional Director of the activities of the International Union in Decatur, Alabama?

A. That's right.

Q. Who was the Director in the Decatur area?

A. Mr. Thomas J. Starling.

Q. Mr. Michael Volk was what?

A. He was North Alabama Representative.

Q. North Alabama International Representative?

A. Yes, sir.

Q. Those three men had the charge and control of this strike?

A. They did.

Q. And of the activities connected with it?

A. They did.

Q. And they were the ones who made orders as to what was done and how it was to be done, planned the program, and saw that it was carried out?

A. That's right.

Q. Mr. Drake, I will ask you if you saw any announcement in writing, either by advertisement in the paper or

otherwise, that there would be no work for the copper plant on the morning of July 18, 1951?

A. I don't remember whether it was in the paper or not.

Q. You don't remember whether it was in the paper or not? I will ask you is it not true that on all occasions previous to that, whenever there was a shut down or cessation of work for any reason, that it was announced in The Daily that the copper plant would be closed?

A. Mr. Oakes told us that personally.

Q. I asked you: When a shut down was contemplated or cessation of work was contemplated that there would be no work in the plant beginning at a certain time?

A. That has been the policy in the plant.

Q. All the time?

A. That's right.

Q. How long had the dinky been there when you had the conversation with Chief Whitmire?

A. I would say it had not been there just maybe 15 or 20 minutes.

Q. Had you been looking at it all the time it was there? [fol. 332] A. No.

Q. How much of the time did you look during that period?

A. As far as noticing the dinky, I didn't because I was back up here picketing the street.

Q. That picket line went all the way across the paved portion of Railroad Avenue?

A. Went across the street.

Q. What do you mean by the street? You mean Railroad Avenue?

A. I guess that is Railroad Avenue.

Q. You said you had not been paid anything by the union. Did you get strike benefits?

A. I did.

Q. How much strike benefit did you receive?

A. I received groceries.

Q. What amount each week?

A. Approximately \$17.00.

Q. \$17.00 a week? For how many weeks?

A. I would say approximately three months.

Q. Did Webster get groceries?

A. He did.

Q. Did Hovis get groceries?

A. Yes, sir.

Q. Every man on the picket line received groceries?

A. Every man in the plant that asked for groceries, we gave them to them.

Q. You gave them to the picket line?

A. Also, yes.

Q. You didn't give them to anyone that didn't serve on the picket line, did you?

A. If they had a legal excuse not to walk the picket line; if they had sickness.

Q. Can you name one that didn't walk the picket line that the union furnished groceries?

A. Yes.

Q. Who?

A. Cornett.

Q. Anybody else? What was Cornett's first name?

A. I don't remember.

Q. You know what department he works in?

[fol. 333] A. He works in, I believe, around the press.

Q. How do you spell that?

A. "Cornett".

Q. Do you know where he lives?

A. I do not.

Q. It is your testimony that Cornett did not walk the picket line?

A. He did not.

Q. But he was given strike benefits by the union?

A. Yes, sir.

Q. Groceries?

A. Yes, sir.

Q. Anything else?

A. They said he was renting at that time and said they paid his rent; I don't know.

Q. Anybody else who didn't walk who was given groceries or rent?

A. Right off I can't tell.

Q. Cornett is the only one you recall?

A. Yes, sir.

Q. He a member of the union?

A. He was.

Q. Can you get his full name and address?

A. I did have it at that time.

Q. Have you got it now?

A. No.

Q. Can you get it?

A. He works at the plant.

Q. In addition to furnishing groceries, they paid the house rent for those on the picket line?

A. Yes, sir.

Q. In addition to that, they paid some payments on mortgages for the men on the picket line?

A. I believe they did.

Q. What other purposes did they furnish money for?

A. Medical purposes; sickness.

Q. Some money was paid for insurance policies?

A. That's right.

Q. Some had debts coming due and were being crowded, and they advanced money to pay on those?

A. They paid it for them.

[fol. 334] Q. They paid them for them?

A. Yes, sir.

Q. You say "they". You mean the union?

A. Yes, sir.

Q. Mr. Duncan is a paid, salaried agent of the International Union, isn't he?

A. I presume he is.

Q. Mr. Starling is a paid, salaried agent of the International Union?

A. I presume he is.

Q. Michael Volk is a paid, salaried agent of the Union?

A. I presume he is.

Q. What time did you start walking the picket line that morning?

A. I would say I got there around six o'clock.

Q. You walked until what time?

A. I was out there practically the whole day.

Q. Most of the day?

A. Yes, sir.

Q. You were there when Russell's car arrived?

A. I was.

Q. How close did you get to it?

A. 15 or 20 feet.

Q. You didn't hear anybody yell, "Turn him over"?

A. To my knowledge, I don't recall.

Q. You didn't hear any cry like that made that day, that morning?

A. I might have heard that sometime up in the day. When our boys come out there, some might have been kidding along.

Q. Kidding about turning them over?

A. That's right.

Q. You didn't hear them kidding him about turning him over?

A. Not him.

Q. You hear them kidding anybody about turning them over?

A. I believe Mr. Dyer over here (indicating defendants' table).

Q. Kidding Dyer about turning him over?

A. Yes, sir.

Q. Turning him over for what?

A. We were not going to turn him over.

Q. Just saying that?

A. Yes, sir.

Q. What about this man, Schelbe? Were you there when [fol. 335] he came up and they told him they would hate for his to be the first car turned over that morning?

A. The only time I remember Schelbe, he came through pretty fast one morning.

Q. Didn't hear any talk about turning him over?

A. No.

Q. Sir?

A. No.

Q. Do you deny they told him out there they would hate for his car to be the first turned over that morning?

Mr. Adair: We object to that.

Court: Sustained.

Mr. Wilkinson: We except.

Q. The picket line was organized and conducted as Mr. Starling and Mr. Volk and Mr. Duncan planned it and instructed the men?

A. That's right.

Q. And whatever was done was done through their planning, program and instruction?

A. I think so.

Q. How often did you picket there? Every day?

A. Not every day.

Q. How many days did you picket following the 18th?

A. Every day I was there on occasion, but I also looked after the groceries, too.

Q. Running the commissary was part of your job?

A. Yes, sir.

Q. Where was your commissary located?

A. In front of the Goodyear Mills out at the end of Sherman Street.

Q. The union had a tent near the picket line?

A. They did.

Q. It was over on the right hand side of the road between the paved portion of Railroad Avenue and the railroad?

A. That's right.

Q. That is where the passes were issued for people to go in?

A. As far as passes being issued, I don't know anything about it.

Q. You don't know of anybody admitted to the plant by passes?

A. No.

Q. Did Duncan stay out there practically all the time, he and Stahling?

[fol. 336] A. Not too much. They were there on occasions.

Q. They came out there every day?

A. Not every day.

Q. They came out the first day the picketing started?

A. They did.

Q. Both of them?

A. Yes, sir.

Q. And Volk?

A. Yes, sir.

Q. Who issued the passes out there?

A. As far as anybody issuing any passes, I don't know.

Q. Just what was your job in connection with the picket line? Did you run the roster?

A. I ran the roster.

Q. Made up a list of the men. How many men on the first shift? Did you have three shifts?

A. That's right.

Q. Did the shifts on the picket line correspond to the shifts at the plant in point of time?

A. That's right.

Q. You started picketing that morning what time?

A. Approximately six o'clock.

Q. That was your first shift?

A. Yes, sir.

Q. And picketed until when?

A. Until around four in the afternoon.

Q. How many men did you have on the first shift that were assigned to picketing?

A. I believe approximately five at a time; somewhere in that neighborhood.

Q. Do you know there were 15 or 20 in the picket line around eight o'clock?

A. It probably could have been in the early part of the morning.

Q. How many men did you assign?

A. I wasn't the guy that did the assigning. I was with the second shift.

Q. Who assigned men to picket that morning?

A. I don't remember who was picket captain.

Q. Were you picket captain any part of that day?

[fol. 337] A. No.

Q. Were you picket captain on August 20th?

A. No.

Q. Were you out there on August 22nd?

A. I was.

Q. How many were on the picket line that morning?

A. That is hard to estimate.

Q. What is your judgment?

A. I would say 10 or 15.

Q. 10 or 15?

A. 10.

Q. And you don't know who was the picket captain that morning?

A. I don't know.

Q. What was the picket captain's duty?

A: To name the pickets and what hours they were to walk.

Q. At the union meeting when you all announced you were going to strike, I will ask you if these union officials didn't appeal to you all to get out a big crowd and have a big crowd there that day?

A. I don't remember that.

Q. Did you hear anybody say at the meeting, any meeting, it was desirable to have a large crowd of sympathizers at the picket line?

A. No.

Q. What about the men not assigned to picket duty?

A. Naturally all that were interested were out there that morning.

Q. They were notified to be there?

A. I suppose so.

Q. You wanted the full strength out there?

A. Not necessarily for that. It was to get organized.

Q. You had to have the men there to get organized?

A. Yes, sir.

Q. How many members of the union were there at that time?

A. I would say approximately four hundred.

Q. Approximately all of them were present?

A. That, I don't know.

Q. You were there?

A. Yes, sir.

Q. What is your judgment as to the number that was there?

A. I would say around 200.

Q. Did the crowd increase as the day grew on?

[fol. 338] A. Not necessarily. I don't think so.

Q. You had 200 when you started. How many were there around eight o'clock on July 18th?

A. Just the union members out there, I don't know, because they were mixed in the crowd and it was a large crowd.

Q. What would you say your judgment would be as to the number of the crowd around eight o'clock?

A. In the vicinity of the picket line? I would say 100.

Q. That is the judgment you have of the number of the crowd?

A. On each side.

Q. 100 on each side?

A. Not necessarily. You talking about right in the vicinity of the picket line?

Q. Within a radius of 100 feet of the picket line, how many people were there?

A. I would say around 50 to 100; something like that.

Q. You were on the negotiating committee?

A. Yes, sir.

Q. What is union security?

A. That is in order to be able to hold the union together from a future standpoint.

Q. What is union security?

Mr. Adair: I object to counsel going into this.

Court: I don't know whether it is relevant to this proceeding.

Mr. Adair: Its only purpose is to take the jury away from the true issue.

Mr. Wilkinson: We've got a perfect right to show what the negotiating was about.

Court: I have no knowledge about union security whatever. I don't know whether it is relevant or irrelevant. At this time, I'm going to overrule.

Mr. Adair: We except.

Q. Union security means you want a contract containing a provision that members of the union have to remain members of the union, and the company has to deduct from their pay the union dues?

A. I believe so.

Q. That was one demand the union was making on the company?

Mr. Adair: We object to "demand".

Court: Sustained.

[fol. 339]. A. Not necessarily.

Q. Tell us, was that one demand?

Mr. Adair: His answer was "not necessarily". Counsel can move to exclude his answer.

Court: "Not necessarily" really answers.

Q. Is it not true that one of the demands that was made on the company by the International Union was a union security clause in the contract?

A. As I was saying awhile ago—

Q. I didn't ask what you were saying.

A. I can't answer that question unless you let me go into detail.

Q. Didn't you have a banner on the picket line "Striking for Union Security"?

A. For other purposes, too.

Mr. Wilkinson: I ask to exclude that. I want the witness to answer the question.

Court: That is sustained. Just say whether or not in your negotiations you were insisting that the company recognize what you meant by union security.

A. We did ask for that.

Q. And you had a banner informing the public you were striking for union security, didn't you?

A. They had a banner to that effect.

Q. The picket line was carrying placards?

A. Yes, sir.

Mr. Adair: I would like to interpose another objection to this line of questioning. It has been admitted by the plaintiff this was a perfectly legal strike. They had a lawful right to call the strike, and this has no bearing whatever on the issue of the case.

Court: That is a matter for the jury, I think. You can argue that to the jury.

Mr. Wilkinson: I don't agree that we admitted it was a perfectly legal strike. They had a right to strike under certain legal conditions. I call your attention to the Constitution of the union itself—

Mr. Adair: I object to argument to the jury at this time.

Mr. Wilkinson: I am addressing the Court in regard to your comment.

[fol. 340] Q. Mr. Witness, I want to clear up one thing in my mind: I understand your testimony is that you held one union meeting at one o'clock?

A. Yes, sir.

Q. That was attended by what you call the second shift men?

A. That's right.

Q. When was the next meeting held?

A. Around four, or after four.

Q. Sir?

A. After four o'clock.

Q. How long after four o'clock?

A. I would say somewhere between four and four-thirty.

Q. Between four and four-thirty?

A. That's right.

Q. Where was that meeting?

A. Same place—Union Hall.

Q. In Decatur?

A. Yes, sir.

Q. Who attended the second meeting held about four-thirty?

A. First and third shifts.

Q. First and third shifts?

A. That's correct.

Q. You mean by that, men who belonged to the union?

A. That's right.

Q. Didn't have any who didn't belong to the union?

A. We did have some.

Q. A very few?

A. Yes, sir.

Q. What was it you said about Oakes coming down to the picket line?

A. Mr. Oakes stopped at the picket line in the morning of the 18th.

Q. Stopped at the picket line?

A. He stopped at the picket line and called Duncan over to his car and showed him his card; how the salaried employees could be identified, that would come on into the plant and that you could tell the cards; they would be numbered from two to four thousand. They were to be allowed to come on through.

Q. Oakes said to allow those to come on through?

A. Yes, sir, they agreed that and had already been an agreement made before.

Q. Who had that?

[fol. 341] A. I heard the agreement in the office the day before.

Q. At the guard shack?

A. Yes, sir.

Q. Just tell us everything that happened down at the guard shack. What time was the meeting there?

A. About three o'clock.

Q. That was before the union meeting at 4:30?

A. Yes, sir.

Q. Who all was there?

A. Mr. Howard Hovis, myself, Mr. Runager, Clyde Bradshaw, Mr. Norman Ange, Mr. Duncan.

Q. Who was the spokesman?

A. Mr. Duncan.

Q. Who spoke for the company?

A. Oakes.

Q. Tell us what was said. Who opened the meeting?

A. We went in. Mr. Duncan explained to Mr. Oakes what happened in the meeting. Mr. Duncan said, "Mr. Oakes, we just came from a meeting. The reason we called this meeting is in all probability the plant will be struck in the morning at 8 o'clock, and if you need any key employees or people that you need to prevent damage to the machinery or to keep any part of the plant going for safety purposes or anything, that we would agree to whatever number of people you say it will take." Mr. Oakes said, "No, our foremen are perfectly capable of taking care of the jobs and only the salaried employees will be allowed in the plant. The gates will be closed." He turned to Robson and said, "You know there is construction going on on the lean-tos. What about that?" Mr. Robson said, "That has already been settled. They are union people and they said they would not cross the line to come in."

Q. Robson was present. Who else?

A. Mr. Kromer and Mr. Oakes.

Q. Anybody else?

A. Not to my knowledge.

Q. And Duncan reported to him about the union meeting and that in all probability the plant would strike the next day?

A. That's right.

Q. And the union was willing to admit certain employees or men to take care of the machinery?

A. Yes, sir.

[fol. 342] Q. And his statement was that only the salaried employees would be admitted?

A. That's right.

Q. And the plant would be closed to the hourly men?

A. That's right.

Q. So you had an agreement with the company, with Oakes?

A. I would say we had an oral agreement.

Q. A chairman agreement between Oakes and the representative of the union that the plant would not admit hourly employees the next day?

Mr. Adair: I object to "chairman"; that calls for a conclusion on his part.

Court: Strike out the word "chairman".

Mr. Wilkinson: Reserve an exception.

Q. Wasn't anything else to be said or done to complete the agreement?

A. Mr. Oakes did say that they expected to meet again and hoped they could agree in the future.

Q. They expected to meet again and agree in the future on what?

A. I don't know. On the contract I figured.

Q. Did he say what they hoped to agree on?

A. Their differences.

Q. Did Oakes in the conversation specifically state what he hoped they would agree on?

A. No, he didn't.

Q. So the conversation you have detailed is the entire conversation?

A. To the best of my knowledge.

Q. That's it?

A. Yes, sir.

Q. You left there with the distinct impression that the plant would not open the next day for hourly men?

A. Yes, sir.

Q. That was the way it impressed you?

A. Yes, sir.

Re-direct examination.

By Mr. Adair:

Q. Mr. Drake, Mr. Wilkinson has asked about one particular item of discussion on the contract, union security. I will ask you whether or not the question of arbitration was also in dispute with the parties?

A. It was.

Q. Just tell the jury what you understand that question to involve.

[fol. 343] Mr. Wilkinson: We object to that.

Court: Overruled.

Mr. Wilkinson: Reserve an exception.

A. Arbitration is where two parties fail to agree. They will call in a disinterested party and both go to him and explain their side and whatever agreement he comes to, that is what the union agrees to. We were asking for that.

Q. Was that in connection with grievances that would arise?

A. Yes, sir.

Q. What position did the company take on that?

A. "No."

Mr. Wilkinson: We object to that; hearsay.

Court: Overruled.

Mr. Wilkinson: We except.

Q. What was their position?

A. "No." They would not accept arbitration.

Q. Did the company agree to anybody having a final say so in grievances?

A. They did not.

Q. What was their only method?

A. That they would have the last say in any grievances.

Q. On any dispute that arose under the contract?

A. That's right.

Q. Was that one of the principal issues in dispute?

A. Yes, sir.

Q. Wages in dispute?

A. They were.

Q. What was the company's position on wages?

A. 6¢ was offered, a raise of 6¢.

Q. They had offered that before the meeting with the union, had they not?

A. Yes.

Q. What was the union asking for?

A. They just said that wasn't enough.

Q. Do you know how the wage rate of the Decatur plant at that time compared with the wages paid in Detroit?

Mr. Wilkinson: We object; hearsay.

Court: Sustained.

Q. You were not in agreement on wages?

[fol. 344] A. We were not.

Q. You were not in accord on arbitration?

A. No.

Q. Were you in agreement on union leaves?

A. No.

Q. In agreement on seniority?

A. We were not.

Q. Can you think of some other items you were not in agreement on?

A. The bulletin board.

Q. What was that question?

A. They was to have a bulletin board in the plant to put union, to be able to put any announcements the union might have to make.

Q. The company would not agree to that?

A. No.

Q. What other issue was still open?

A. The number of stewards on the job.

Q. What is a steward?

A. A steward works in a certain department and represents a certain number of men. A small department may be represented by a smaller number. The men, they carry the grievances directly to the steward and the steward goes to the foreman and they turn the grievance in for them, and it is discussed among them.

Q. The company and the union were not in agreement on the system of stewards or how many?

A. Right.

Q. Any other issues?

A. I believe that was the main issues.

Q. Do you remember in negotiations whether or not the company, pardon me, whether or not the union's position on union security you would take check-off or any other form?

A. That's right, either take check-off, maintenance of membership, or arbitration; one of the three; we would take one of the three.

Q. Any issue the company would give in on, you would abandon the others?

A. That's right.

Q. Mr. Drake, you were asked something about whether or not the union constitution required you not to testify against the union. I presume Mr. Wilkinson is referring to the UAW Constitution. I will ask you, are you a member of the UAW Union?

[fol. 345] A. I would say "no".

Q. I want to know whether you are or are not?

A. I would have been provided we had gotten the charter and the charter voted on.

Q. Are you now?

A. No.

Q. Are you a member of the union?

A. Of the A.F. of L.

Q. Not in the C.I.O.?

A. No.

Q. The A.F. of L. doesn't say anything about you have to abide by the C.I.O. Constitution while an A.F. of L. member?

A. No.

Q. What A.F. of L. union do you belong to?

A. Local 1715, painters' union.

Q. What craft?

A. Painters.

Q. Where have you been working since the strike?

A. Chemstrand.

Q. Have you applied for your job back at Wolverine, did you after the strike?

Mr. Wilkinson: We object; that's immaterial.

Mr. Adair: I withdraw it.

Re-cross examination.

By Mr. Wilkinson:

Q. You got a copy of the contract of the painters' union with you?

A. I don't have it with me.

Q. Is that the same union this man, Boyd, got an injunction against down in Birmingham?

A. That, I don't know.

Q. There's more than one painters' union?

A. Yes, sir; quite a few.

Q. But just one International painters' union?

A. I presume there is one International.

Mr. Adair: I object to trying the painters. They are not in this case.

Court: Sustained.

Mr. Wilkinson: Reserve an exception.

Mr. Wilkenson: We offer to show what the provisions [fol. 346] in that Constitution are with reference to that member making reflections on the labor union.

Court: That was ruled out. You are not to consider that.

Mr. Wilkinson: Reserve an exception.

NORMAN D. ANGE, next witness for the defendants, being first duly sworn, testified:

Direct examination.

By Mr. Adair:

Q. Your name is Norman D. Ange?

A. Yes, it is.

Q. Are you married and living in Decatur?

A. Yes, sir, I am.

Q. How long have you lived in Decatur?

A. I believe all my life.

Q. How old are you?

A. 25 years old.

Q. 25?

A. 25.

Q. Mr. Ange, were you working at the copper company on the 17th day of July, 1951?

A. I was.

Q. Were you a member of the union's temporary negotiating committee?

A. I was.

Q. What was your job in the plant?

A. I was a marking toolman operator.

Q. Tell us what that is. What was your work?

A. Well, I marked the coils as they came off, marked them from 1 to 500 feet long. I put them in my machine and marked them off in certain lengths. When they specified certain lengths, they were marked and cut off in that length.

Q. As a member of the union's temporary negotiating committee, did you meet with the officials of management at various times before the 17th of July and discuss the contract?

A. Yes, I did.

Q. On the 17th of July, 1951, did you attend the one o'clock union meeting?

A. Yes, I did.

Q. You recall who it was that was in attendance at that meeting?

[fol. 347] A. The second shift.

Q. You were there, were you?

A. Yes, I was.

Q. Can you give us an estimate of how many folks were there at that time?

A. I would say approximately 150 people.

Q. At the one o'clock meeting?

A. Yes, sir.

Q. What transpired at that meeting?

A. The meeting was called to take a vote on the contract that had been offered us by the company, whether to accept or reject it, and a vote was to be taken on whether to strike or not. The meeting—there were five committee members. The five committee members and Mr. Duncan made report on the contract, what had been offered us, and we took the vote whether to accept or reject, and unanimously voted to turn it down; and we took a vote whether to strike the plant and again the vote was unanimous to strike the plant.

Q. What did you all do—the negotiating committee?

A. Mr. Duncan said he would go call Mr. Oakes and arrange a meeting for that afternoon.

Q. Who is Mr. Oakes?

A. He is the Personnel man.

Q. The company representative?

A. Yes, sir, for Wolverine.

Q. Did he arrange such a meeting?

A. Yes, he did.

Q. Did you meet with Oakes?

A. Yes, we did.

Q. You recall what time of day that was?

A. Three o'clock.

Q. You recall where the meeting was?

A. I believe they call it the conference room, directly behind the main gate, at the guard shack at the entrance of Wolverine.

Q. Do you recall who was present on behalf of the employees?

A. Olan Drake, Pete Runager, Clyde Bradshaw, Howard Hovis, myself, and M. E. Duncan.

Q. Who was present, if you recall, on behalf of the company?

A. Mr. Oakes, Paul Robson, Bud Kromer.

Q. You know what Mr. Robson's position was at that time?

[fol. 348] A. I believe his title was Plant Engineer.

Q. How about Kromer?

A. He was, I believe, called Factory Superintendent.

Q. How about Oakes?

A. He was Personnel man. I don't know the exact title.

Q. Had Oakes been the one doing all the talking for the company in negotiations?

A. Yes, sir.

Q. Did the talking to the committee on this occasion at three o'clock?

A. Yes, sir.

Q. Who did the talking for the union committee?

A. Mr. Duncan.

Q. Tell us just what transpired there at that meeting.

A. Mr. Duncan told Mr. Oakes that the way things looked,

the plant would be struck the following morning at eight o'clock. He offered any key men they would need for stand-by protection of the plant machinery and equipment, and Mr. Oakes told him that they would not need any men. The supervisors would handle all of that they had on the pay-roll, and they were capable of handling that, and that the plant would be closed to all hourly rated employees for the duration of the strike. Was not anyone but the supervisors to be allowed to work. He said the reason for that was they didn't want any coming to work or trying to come in, because one day there would be a settlement made and all would have to work together and they didn't want hard feelings among the employees.

Q. Did Mr. Robson have anything to say that you know of?

A. Mr. Oakes asked Mr. Robson about the construction of some lean-tos going on. Bricklayers were laying brick, and Mr. Robson said that had already been settled; that the bricklayers said they were union and they would not cross the line.

Q. They were not employees of the company?

A. No, they were not.

Q. Robson said they were not coming in either?

A. That's right.

Q. Was anything else said at that meeting you recall?

A. I believe that was all.

Q. When the meeting broke up; what did you all do then?

A. We left and attended the meeting of the first and third shifts.

Q. What time was it held?

A. It started a few minutes after four.

[fol: 349] Q. Were you there?

A. Yes, sir.

Q. At the Union Hall on Second?

A. Yes, sir.

Q. What did you estimate the number of people at the second meeting?

A. I would say 250 approximately.

Q. How full was the hall?

A. It was overflowing. They were standing out in the little hall and some were on the stairs.

Q. What took place at that 4:30 meeting?

A. Again the committee, Mr. Duncan, Mr. Starling and Mike Volk told what the contract was that had been offered up to that time, and Mr. Duncan also made report on what happened at the meeting we just came out of with Oakes at the plant. The vote was taken on whether to accept or reject, and again it was a unanimous vote to turn it down. A vote was taken on whether to strike the plant; again the vote was unanimous.

Q. Were any instructions then issued by Mr. Starling relative to the picketing?

A. Yes. Mr. Starling made a talk and said the picketing should be clean and orderly, no drinking for sure to go on on the picket line, because somebody might cause violence and that was one thing we did not want. Wanted it to be peaceful.

Q. Mr. Ange, were you out there at the picket line or in the vicinity of the picket line the next morning on the 18th?

A. Yes, I was.

Q. At that time, did you know the plaintiff in this case; Paul Russell?

A. Yes, I did.

Q. Did you see him out there at any time on that morning?

A. Yes, I did.

Q. Tell the jury just what you saw and observed in connection with the plaintiff.

A. I saw Mr. Russell come up and stop back quite a piece from the picket line. Howard Hovis walked over and started talking to him. They talked for quite a while and all at once Russell started the car up and drug Howard Hovis for several feet and stopped again. He sat there for maybe another hour or so.

Q. Hovis kept talking to him, do you know, after you say [fol. 350] he was drug several feet, you know whether or not he kept talking?

A. I don't remember whether he kept talking to him after that or not.

Q. During the latter part of the time Russell was there, was anybody around his car in that latter period of time?

A. During the latter period, he was sitting there alone.

Q. Do you know how it happened he was sitting there alone?

Mr. Harris: We object to that; calls for a mental operation of the witness.

Court: Sustained.

Q. Did you receive any instruction or did you hear the other people in the vicinity receive instruction they were not to talk to Russell at all?

A. No, I didn't.

Q. Before Mr. Russell arrived at the picket line, I will ask you whether or not you recall seeing Mr. Oakes come to the picket line, the same Mr. Oakes you talked to the afternoon before?

A. Yes, I did.

Q. Will you tell us what you observed when Mr. Oakes reached the picket line?

A. He stopped his car and called Duncan over and talked to him for a while. Mr. Duncan came back and said Oakes told him—

Mr. Harris: We object to any conversation between this witness and Mr. Duncan as to what Oakes told him.

Court: Sustained.

Q. Did Duncan issue any instruction to the pickets immediately following his conversation with Oakes?

A. Yes, he told us we had a way to identify the salaried personnel. They would have a badge numbered, starting from two to four thousand.

Q. Mr. Ange, how much dues have you paid, since 1949, how much dues have you paid UAW?

Mr. Harris: We object to that; it's immaterial.

Court: Overruled.

Mr. Harris: We reserve an exception.

Q. How much dues have you paid?

A. None.

Mr. Harris: Same objection.

Court: Overruled.

Q. How much initiation fee have you paid?

Mr. Harris: We object; immaterial.

Court: Overruled.

[fol. 351] Mr. Harris: We except.

A. I paid \$1.00, was all I ever paid.

Q. Have you ever received any money or payment in money from the union for anything you have done?

A. Yes, I have.

Q. Will you explain that to us?

A. I have got paid for lost time, the time I lost in negotiations with the company officials.

Q. Explain to us just what you mean.

A. We had to check out from work on the days we met. Say, if it was in the afternoon, we would check out twenty or thirty minutes before the meeting began, and I got paid for that time until we went back to work.

Q. Did you get paid for any lost time after the 18th of July, 1951?

A. No.

Q. Receive any money for anything after then?

A. No, did not.

Q. As a matter of fact, this payment you are talking about was to keep from losing wages at the plant while you were in negotiations?

Mr. Wilkinson: We object; argumentative; repetitious; invades the province of the court and the jury.

Court: It is repetitious. I will sustain it on that.

Cross examination.

By Mr. Harris:

Q. What time did you get out to the picket line on July 18th, which, as I understand, was the first day of the strike?

A. I imagine sometime between five and six in the morning.

Q. Somewhere between five and six in the morning?

A. Yes, sir.

Q. How many members of the union were there at that time?

A. I don't know exactly. Wasn't but just a few.

Q. Can you give the jury an estimate?

A. 12 or 15 when I first got there.

Q. 12 or 15?

A. Yes, sir.

Q. Who had given you instructions to be there at that early hour of the morning?

A. No one had given instructions.

Q. Who had told you to be there?

A. We talked it over among ourselves.

[fol. 352] Q. You planned that the night before?

A. Yes, sir.

Q. What time of night did you make those plans?

A. It was directly after the meeting held the afternoon before.

Q. Who was present when you made those plans?

A. The committee, Mr. Duncan, most of the members of the union.

Q. Starling there?

A. Yes, he was.

Q. He the Regional Director for Region 8?

A. Yes, sir.

Q. What territory does "8" cover?

A. I don't know exactly. It covers several southern states.

Q. Cover Alabama?

A. Yes, sir.

Q. Georgia?

A. Yes, sir.

Q. Florida?

A. I don't know.

Q. Tennessee?

A. I don't know.

Q. Mississippi?

A. I don't know.

Q. All you know is Alabama and Georgia?

A. Yes, sir.

Q. Starling's headquarters in Atlanta?

A. Yes, sir.

Q. And Duncan's headquarters in Atlanta?

A. I think so.

Q. Who was Michael Volk?

A. I think he was Alabama Representative.

Q. His headquarters in Birmingham?

A. That's right.

Q. He at that meeting?

A. Yes, he was.

Q. In other words, Starling, Duncan and Volk all were there?

A. Yes, sir, they were.

Q. How many union members were there?

A. Approximately 250.

Q. When you all were making plans, you have, you think, [fol. 353] approximately 250 present?

A. I don't know whether they all stayed there or not. Most of them still were.

Q. Most of them were still there?

A. Yes, sir.

Q. How many picket signs did you have up there?

A. 10 or 15, I imagine.

Q. 10 or 15?

A. Yes, sir.

Q. Did you have any sticks up there?

A. No sticks, no. The sticks were on the picket signs.

Q. In other words, the picket sign was nailed on a stick?

A. Yes, sir.

Q. And what time did you get out to the picket line?

A. I got there between five and six.

Q. And did union members keep gathering there on up until eight o'clock?

A. I think there was a meeting held that morning before most of them came out.

Q. What time was that meeting?

A. Around 6:30 or 7.

Q. When had that meeting been planned?

A. The night before.

Q. You know how many were at that meeting?

A. No. I wasn't there.

Q. How many came out there between the time you got there and eight o'clock?

A. I imagine most of them.

Q. Approximately 250?

A. I imagine there was approximately 400.

Q. Approximately 400 union members were out there

in the vicinity of the entrance to the plant by eight that morning?

A. Yes, sir.

Q. And that had been planned at the meeting the afternoon and night before and early that morning?

A. That's right.

Q. How long did you stay out there on the picket line?

A. I was out around there most all day.

Q. Did you see Stahling about there that day?

[fol. 354] A. Yes, sir, at eight o'clock.

Q. Do you know Burl McLemore?

A. When I see him.

Q. Did you know him at that time when you saw him?

A. I know him and I saw him.

Q. You did see him?

A. Yes, sir.

Q. Did he drive his car up there a short time before Paul Russell drove up to the vicinity of the picket line?

A. I remember seeing him come out in the car with his boy. I don't know whether it was before or after.

Q. It was along shortly before eight?

A. Yes, sir.

Q. And his boy was in the car with him?

A. Yes, sir.

Q. What happened when he drove up?

A. His boy was driving. He stopped the car.

Q. His boy was driving?

A. Yes, sir, if I remember correctly.

Q. Where did he stop the car?

A. Before he got to the picket line. I don't remember exactly.

Q: How far in your judgment from the picket line?

A. As far as from here to the wall back there (indicating back wall of court room).

Q. That far wall back there?

A. Yes, sir.

Q. How many feet is that in your judgment?

Q. I would say between 60 and 70 feet.

Q. Between 60 and 70 feet?

A. Yes, sir.

Q. Is that as close as you saw Burl McLemore get to the picket line?

A. That's all I remember. I remember seeing him get out of the car.

Q. Did you stay on the picket line when he got as far as from here to the wall?

A. I wasn't on the picket line. I was in the tent over next to the picket line.

Q. You had not erected the tent at that time, had you?

A. I don't remember whether the tent was there or not. I was where the tent was.

[fol. 355] Q. The tent was put up, but it wasn't there the 18th, was it?

A. I don't remember whether it was there the 18th or not. I was where the tent later was erected.

Q. Tell the jury where that tent was with reference to where these men were walking across the street, around in a circle or elliptical formation:

A. On the south side of the road.

Q. And how far from where the men were walking?

A. Around 20 or 30 feet.

Q. Which way from where the men were walking? Back towards town?

A. Back towards town.

Q. That would be west of where the men were walking?

A. Yes, sir.

Q. You were closer to Burl McLemore than the picket line when you saw him, were you not?

A. I don't know whether I was or not. When he got out of the car, he was on the north side of the road.

Q. He was west of you, wasn't he?

A. I guess so.

Q. You were west of the picket line?

A. Yes, sir.

Q. Between him and the picket line?

A. Yes, sir.

Q. What did Burl McLemore do when he got out?

A. I don't know. I didn't pay any attention to him.

Q. Did you stay in the vicinity of the picket line?

A. Yes, I was there.

Q. Do you tell this jury that Burl McLemore didn't drive his car up to the picket line?

A. As I remember, his boy was driving.

Q. Do you tell this jury that Burl McLemore's car wasn't driven up to that picket line?

A. No, it wasn't driven up there.

Q. That car wasn't driven up to the picket line and backed off and driven off on the north side of the road, off of the pavement on to the dirt?

A. The boy stopped the car. He was almost in the mouth of the road leading up into the flour mill. He turned—he didn't get on to the picket line.

[fol. 356] Q. Is that as far as that car was driven?

A. I didn't pay any attention after he got out of the car.

Q. Did you see Burl McLemore after he got out of the car?

A. No, I didn't.

Q. Did you see anyone walk up to the picket line that morning as if to walk toward the plant and the pickets congregating in front of him?

A. No.

Q. You didn't see that?

A. No.

Q. Did you hear anyone cry out there that morning, "Turn him over"?

A. Yes, I heard the cry made.

Q. When was that cry made?

A. That was when Russell was sitting in his car.

Q. You heard someone cry, "Turn him over"?

A. Yes, sir.

Q. How many people did you hear cry that?

A. One person.

Q. Where was that one person?

A. He was in the vicinity of the car somewhere.

Q. Do you know who it was?

A. I do not.

Q. Is that the only time you heard that outcry made that day?

A. Yes, it is.

Q. Did you go back to the picket line the next day?

A. Yes, I was there the next day, I imagine.

Q. I don't want what you imagine. Tell the jury in your best judgment.

A. Yes, I was there most every day.

Q. Nearly every day from July 18th to August 22nd, were you?

A. That's right.

Q. How many pickets did you have on July 19th, which was the second day of the strike?

A. I don't remember.

Q. Did you have as many as the first day?

A. I don't remember.

Q. Can you give us your judgment as to how many?

A. Not now I can't.

Q. Did you have as many on the third day as the first day?

A. I don't know.

[fol. 357] Q. You can't tell the jury that?

A. No.

Q. I will ask you: During the second week of the strike or along about that time, tell the jury how many pickets were out there.

A. I don't know how many. We thinned the pickets down after a few days. It wasn't as many.

Q. After the first few days, you thinned the pickets down?

A. Yes, sir.

Q. How many were walking around in a circle after the first few days?

A. I don't know exactly.

Q. Can you give the jury an estimate?

A. Sometimes there would not be but one or two; sometimes there was six or eight.

Q. About the middle of the strike, you were using from one to eight?

A. Part of the time; part of the day.

Q. How many union members would be out there congregated on the south side of the road during that same time?

A. I don't know.

Q. Tell the jury approximately. They are trying to get the facts in this case.

A. I don't know approximately.

Q. Fifty?

- A. Some days there probably were.
Q. Many days less than that number?
A. I imagine there was.
Q. What was the least number you remember?
A. A time or two there wasn't but four or five.
Q. When was that?
A. I don't remember the exact date.
Q. It was after the first few days?
A. Yes, sir, I imagine so.
Q. Mr. Ange, you saw an advertisement published in The Decatur Daily of Monday, August 20th by the company saying they were going to reopen on the 22nd?
A. I saw it one day. I don't know whether it was the 20th or 21st.
Q. How many days do you think it was before the plant reopened when you first saw that?
A. Seems like it was the day before, the 21st, if I remember correctly; I'm not sure.
[fol. 358] Q. You remember it was run two days?
A. I don't remember whether it did or not.
Q. How many pickets were at the picket line on the late afternoon of Monday, August 20th, which was two days before the plant reopened?
A. I don't know.
Q. Can you give just an estimate?
A. No, I can't. I don't think I was there.
Q. Were you there that afternoon?
A. I don't think so. I may have been during the day.
Q. I will ask you, to refresh your recollection, were you there on the occasion when the diesel locomotive of the company came out of the yard on the open track where car loads of copper had been spotted?
A. I was there after it came out. I don't know how long it had been out when I got there.
Q. Where was it when you first saw it?
A. Parked behind the tent on Railroad Avenue on the track.
Q. How long had you been there when it parked there?
A. I wasn't there when it parked.
Q. When you drove up there, it was parked?
A. That's right.

Q. Any people around it?

A. There was a bunch standing around the front.

Q. Who did you see standing around the front of it?

A. Olan Drake.

Q. Who else?

A. A Smith boy.

Q. Howard Hovis?

A. I don't remember whether he was standing in front of it or not.

Q. Ralph Webster?

A. I saw him out there. I don't remember where he was.

Q. Mrs. Hovis?

A. Yes, I saw her.

Q. Where was she?

A. At the time I saw her, over near the track.

Q. Did you see her sitting on the railroad track?

A. No, I didn't.

Q. Did that locomotive move under its own power after you saw it?

A. No, I don't believe it did.

Q. I would like for you to tell the jury how many people, [fol. 359] in your judgment, approximately, were gathered at or near that locomotive and near the picket line.

A. At the time I got there?

Q. Yes, sir.

A. I don't know, 150 or 200.

Q. 150 or 200?

A. Yes, sir, at that time.

Q. How many people did you have walking the picket line the morning before the plant reopened?

A. I don't remember.

Q. Were you out there?

A. I don't remember whether I was or not.

Q. The day the company reopened?

A. Yes, I was there the day it opened.

Q. How many union members did you see out there then?

A. Most of them.

Q. That is approximately 400?

A. Yes, sir.

Q. What were they doing?

A. Standing on each side of the road, most of them, back off the road.

Q. Did you have a picket line there?

A. Yes.

Q. How many were walking the picket line that morning as this convoy entered the plant?

A. I don't remember; I guess 10 or 12, maybe 15.

Q. Were you one of them?

A. No, I wasn't.

Q. Tell the jury what the men walking the picket line were carrying?

A. Carrying signs.

Q. What else were they carrying?

A. That's all I saw.

Q. Did you see them walking in a circle?

A. Yes.

Q. Shortly before eight that morning?

A. No, I didn't see them walk too much, not while the men were coming through.

Q. Before the men started coming through and when there would be an interval, what were they doing?

[fol. 360] A. Walking around.

Q. What were they carrying?

A. Picket signs.

Q. What else?

A. That's all that I saw.

Q. You were watching them?

A. Yes, sir.

Q. Looking at them?

A. Yes, sir.

Q. Do you tell this jury you didn't see any of them carrying sticks?

A. No, I didn't.

Q. You didn't?

A. I didn't.

Q. You were looking at the time?

A. Yes, sir.

Q. You say the union paid you money for the time you lost from work. Did they also furnish you groceries?

A. Yes, I got groceries while we were out on strike.

Q. Did they make payment on any debts you owed anybody?

A. They may have made one insurance payment. That's all I remember.

Q. You don't remember them making a payment on the car you had?

A. No, I had already made all my car payments. It was mine at that time.

Q. Did they pay rent for you?

A. They may have paid one month's rent.

Q. They were making payments and furnishing those groceries to the persons who walked the picket line, were they not?

A. Yes, some they did and some they did not.

Q. Can you tell the jury any they made those payments for who did not walk the picket line?

A. There was some excused.

Q. On account of what?

A. One in the grocery store, and illness.

Q. They were working for the union to receive supplies as they came in?

A. That's right.

Q. You can't tell anybody else?

A. I don't know of anyone else.

Q. This meeting you had with Mr. Oakes you mentioned [fol. 361] that Mr. Duncan was there and then your bargaining committee of the local union—was Starling there?

A. No.

Q. Volk there?

A. No.

Q. Where was Volk?

A. I don't know. Up at the Union Hall I imagine.

Q. At the Union Hall?

A. I imagine.

Q. He didn't go out there with you?

A. No, he didn't.

Q. Did you all have any meeting at the Union Hall after the strike began and before the plant reopened?

A. Yes, I think we did.

Q. When was the last one you recall before the plant reopened?

A. I don't remember.

Q. You went out there to the company, you say, about three o'clock on the day before the strike took place?

- A. Approximately three.
- Q. How long were you there?
- A. I would say approximately thirty minutes.
- Q. Then you left somewhere in the neighborhood of 3:30?
- A. Somewhere in the neighborhood.
- Q. That was before the first shift had come off from work?
- A. The first shift comes off at four.
- Q. You all had been there and conveyed your message to Oakes and left the plant before the first shift left the plant?
- A. I think we did.
- Q. How many men worked on the first shift at that time?
- A. I don't know.
- Q. You don't know?
- A. No.
- Q. About how many?
- A. I don't know approximately how many.

MARVIN GARTH, next witness for the defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Adair:

- [fol. 362] Q. Do you live here in Decatur?
- A. Yes, sir.
- Q. Have you lived here most of your life?
- A. Yes, sir.
- Q. Where do you live now?
- A. 749 Sykes Street Northwest.
- Q. What kind of work are you doing now?
- A. Delivering for John D. Wyker & Sons.
- Q. Marvin, did you ever work at the copper plant out here?
- A. Yes, sir.
- Q. Do you recall when the strike come off on July 18, 1951?
- A. Yes, sir.

Q. The first day of the strike, which was July 18th, did you work any that day?

A. Yes, sir.

Q. Tell us just exactly what time you went to work and what happened after you got there.

A. On the morning of July 18, 1951 I went to work. My shift started at 4:30. I went to—

Q. In the morning?

A. Yes, sir. I went to work. I worked until about 7:50 that morning. Mr. T. H. Hughes, he came in. He was supervisor over the department in which I worked. I left my work and went to him and asked what I was to do. I saw the picket line there. He told me to go home; that they were closing the plant down and everybody was going home.

Q. What did you do when he told you that?

A. I just left work and went on to the lean-to and started getting the articles I had before I put on my coveralls to work. I went on out and punched the clock.

Q. You say that was T. H. Hughes? Is he maintenance foreman?

A. Yes, sir.

Q. He your boss man?

A. He's my boss man.

Cross examination.

By Mr. Wilkinson:

Q. You belong to the union?

A. I did.

Q. What about now?

A. I haven't paid anything yet. I don't know where I belong to it or not.

[fol. 363] Q. How long did you belong before you didn't know whether you belonged or not?

A. I belonged to the A.F. of L. and the C.I.O.

Q. A moment ago you didn't know and now you say two. What A.F. of L. union you belong to?

A. Mr., I forget the man's name on Moulton Street, the president of it. I joined the C.I.O. down at the copper plant.

Q. The plumbers and steamfitters' union?

A. I'm a janitor out there.

Q. Did you join the janitors' union?

A. I joined the C.I.O. out there.

Q. Where did you join the A.F. of L.?

A. Down on Moulton Street.

Q. What kind of a union did you join down there?

A. I was a ditch digger down there.

Q. Did you join the ditch diggers' union?

A. I joined the union all I know.

Q. How long did you belong to that union, you don't know which one it is?

A. I belonged to it from the time I got in up until now.

Q. Which one did you join first?

A. The C.I.O.

Q. The C.I.O.?

A. Yes, sir.

Q. Did you drop out of the C.I.O. and join the A.F. of L.?

A. The company look like dropped me out of the C.I.O.

Q. You mean by that you didn't go back to work?

A. They closed the gate and I couldn't go back.

Q. When did they do that?

A. July 18, 1951.

Q. You saw the gate closed down there?

A. Yes, sir.

Q. You went to your boss man and asked what you should do?

A. Yes, sir.

Q. And he told you to go home?

A. Yes, sir.

Q. Told you that you were going to get hurt if you hung around there?

[fol. 364]. A. No, he didn't.

Q. Liable to get hurt?

A. No, sir.

Q. What was said about getting hurt at the picket line?

A. We didn't have any discussion.

Q. You went on home?

A. I didn't go straight home.

Q. You left the plant at 7:50 and never did come back any more!

- A. I stayed outside on the picket line.
Q. You stayed outside on the picket line?
A. Yes, sir.
Q. You walk the picket line out there?
A. Yes, sir.
Q. What time did you go on picket duty?
A. On the second shift.
Q. What time was that?
A. Four in the afternoon.
Q. Four in the afternoon?
A. Yes, sir.
Q. After you left your work in the morning at 7:50, you stayed near the picket line until four?
A. No, sir.
Q. Came on down town?
A. I went home.
Q. How long did you stay at home?
A. I didn't stay there, I was around and about town.
Q. Came down town. How long did you stay down town?
A. No specific time. Just around in town.
Q. You just rambling?
A. Riding around.
Q. How long did you ramble?
A. I roamed around practically all that day.
Q. And you went back to the picket line about four and started walking?
A. It wasn't four. I went before four to walk.
Q. What time did you get out there?
A. I didn't check the time.
Q. In your best judgment.
A. It was around, I would say, around 15 to 3.
[fol. 365] Q. You just stood in the crowd until your turn came?
A. I wasn't put on the second shift that day.
Q. Did you walk the picket line that day?
A. No, sir.
Q. What did you do after you got there at 3?
A. Stood around in the crowd.
Q. How long did you stay there?
A. About three hours.

Q. Until about six o'clock?

A. Yes, sir.

Q. Then you went home?

A. No, sir.

Q. Where?

A. Riding.

Q. You left the picket line?

A. Yes, sir.

Q. Did you come back any more that day?

A. No, sir.

Q. What time did you come back the next day?

A. About 7:45 the next morning.

Q. Start walking then?

A. I didn't walk then.

Q. What day did you walk?

A. I can't tell you exactly what day, but the strike had been on approximately two weeks before I went on.

Q. The strike had been on approximately two weeks before you went on?

A. Yes, sir.

Q. Who assigned you to walk? Who told you to walk?

A. M. E. Duncan.

Q. Duncan was here in Decatur?

A. Yes, sir.

Q. He the man directing the strike?

A. He and Mike Volk instructed us.

Q. Duncan and Volk handled the strike, directed the picketing, telling men what to do and arranging the program?

A. Yes, sir.

Q. So Duncan called you and told you your time had come to walk?

A. No, sir, I received my instruction before time to walk.

Q. Who did you receive them from?

[fol. 366] A. Mr. Duncan.

Q. What did he tell you when he told you to report for picket duty?

A. "We have a picket line out here. You fellows, when your turn comes, you want to walk right. No violence, no bad language. We want peace out here."

Q. And how did you find out when your turn came?

A. I had a watch. We were walking 15 minutes a piece.

Q. Who told you what day to walk, when your turn came?

A. We had a bulletin.

Q. Where was the bulletin?

A. I had one of my own.

Q. Where?

A. In my pocket.

Q. Where did you get it from?

A. It was given me by one of the officials of the union.

Q. Given you by one of the officials of the union?

A. Yes, sir.

Q. They gave you a bulletin to show the schedule of the men who walked, the times and days?

A. Yes, sir.

Q. What official gave you that bulletin?

A. It's been so long—I don't want to put it on the wrong man. If I'm not mistaken, I think I got my bulletin from Mr. Drake.

Q. He a picket captain?

A. Yes, sir.

Q. You under his direction?

A. Yes, the day I went out there for instruction.

Q. After you left the plant that morning at 7:50, did you ever go back in the plant and work any?

A. No, sir.

Q. You didn't go back when the plant reopened?

A. No, sir, I didn't go back.

Q. You didn't work any between the time you left at 7:50 and the reopening day of the plant?

A. No, sir.

Q. Did Mr. Hughes work out there after the strike took place?

A. Yes, sir.

Q. Every day, did he?

A. Every day I was there, he was.

[fol. 367] Q. What was it he told you about how they were going to do?

A. On the morning of July 18, 1951, about 7:50—

Q. What did he tell you?

A. I went to him. I said, "What am I to do?" He said, "Go home." I said, "I see a picket line up." He said, "Yes. Go home. Everybody is going home. Going to close the plant down."

Q. He said everybody was going home and they were going to close the plant down?

A. Yes, sir.

Q. Everybody didn't go home?

A. The hourly rated employees went.

Q. Everybody didn't go home?

A. Those were his words.

Q. Those his words?

A. No, everybody didn't go home.

Q. Lot of employees out there every day while the plant was on strike in the plant?

A. In the plant?

Q. Yes.

A. There was a good big lot there, but not until they called them back.

Q. The salaried employees were in there?

A. I am talking about hourly rated.

Q. The salaried people were there?

A. Yes, sir.

Q. You out there around the picket line the first day of the strike?

A. A short time.

Q. All of the morning the first day of the strike?

A. I didn't stay all the morning.

Q. Biggest part of the morning?

A. Yes, sir.

Q. You know there was copper made in the plant on the morning of July 18, 1951 after you left at 7:50?

A. I don't know about that.

Q. Marvin, did you see men reporting there the morning of the 18th around the picket line with lunch boxes?

A. I worked over in the engineering building and I can't see.

Q. I asked if you saw them?

A. I can't see out at the gate.

[fol. 368] Q. When you quit work at 7:50 and left the plant?

A. I saw men out there then, yes, sir.

Q. And they were the men who worked in the plant?

A. Yes, sir.

Q. How many would you say you saw with lunch boxes?

A. I wouldn't number them. I want to be right.

Q. Your best judgment?

A. I don't have a answer to that.

Q. Good big crowd?

A. Pretty good number, I guess.

Q. Before the strike started on the morning of the 18th, had you been given instruction that the plant would not operate on the 18th?

A. Ask the question.

Q. Before the strike started on the morning of July 18th, had you been given instruction to the effect that the plant would not operate that morning?

A. I was in the meeting when we voted for a strike on July 18th.

Q. I know you were in the union meeting. Had you received any instruction before the strike took place that the plant would not operate on July 18th?

A. I don't understand other than what I have answered.

Q. Had anybody connected with the company told you before the strike that the plant would not operate on July 18th?

A. I did not talk to anybody.

Q. You reported for work in the regular way, at the usual time?

A. Yes, sir.

Q. Upon all previous occasions, ever since the company had been here in Decatur, when a shut down or stoppage of work was contemplated, didn't they post notices to the effect that the plant would not operate on a certain date, for any reason, didn't the company put a notice on the bulletin board?

A. Right.

Q. That had been the custom ever since they came to Decatur?

A. Yes, sir, that's right.

REUBEN SHERMAN, next witness for the defendants, being first duly sworn, testified:

Direct examination.

By Mr. Adair:-

[fol. 369] Q. Your name Reuben Sherman?

A. That's right.

Q. Where do you live, Mr. Sherman?

A. 1326 Sixth Avenue Southeast.

Q. Decatur?

A. Decatur.

Q. Your folks live here?

A. Yes, sir.

Q. How long have you lived here?

A. All my life.

Q. You a family man?

A. Yes, sir.

Q. Your wife and children live in Decatur?

A. Yes, sir.

Q. Where do you work now, Mr. Sherman?

A. Hayes Aircraft, Birmingham.

Q. You go back and forth?

A. No, I come in on Friday afternoons.

Q. Mr. Sherman, do you recall the strike that took place out at the copper plant July 18, 1951?

A. Yes, sir.

Q. Where you working there at that time?

A. Yes, sir.

Q. On the 17th day of July, the day before the strike, what shift were you working on?

A. Third shift.

Q. And that would be from what hours?

A. From 12 until 8.

Q. Does that mean you went to work at 12 midnight and were there until eight in the morning of the 18th, the morning of the strike?

A. Yes, sir.

Q. Just what was your job there, Mr. Sherman?

A. I was press helper and relief operator.

Q. Tell the jury just what that job, press operator and press helper is?

A. The press operator is the man that extrudes the billets.

Q. What are these billets?

A. Copper that is in 45 pound tubes that comes out red hot. The operator puts the billet in the press and extrudes it and it comes out tube.

[fol. 370] Q. You take this piece of red hot copper which comes out of what? A press?

A. It comes out of the furnace and runs down to the press.

Q. This red hot copper comes out of a furnace. How big a piece of copper is that, ordinarily?

A. About 12"; 6"; different sizes.

Q. How thick?

A. They are about 4 or 5 inches thick maybe.

Q. Solid copper?

A. Yes, sir.

Q. Heated red hot?

A. Yes, sir.

Q. And it goes from the furnace to the extrusion press?

A. Yes, sir.

Q. At the extrusion press, does some kind of hydraulic machine press against that billet and it comes out of the die with an opening in the die in a certain shape?

A. Yes, sir.

Q. In connection with that operation, who was operating the press on the morning of the 18th, the morning of the strike?

A. Russell Woodard.

Q. Russell Woodard?

A. Yes, sir.

Q. Was anything unusual took place that morning with reference to the extrusion of the copper?

A. They stopped charging the furnace.

Q. That was what time?

A. It must have been about 7:30.

Q. Tell the jury just what you mean by stopped charging the furnace.

A. When they stop charging the furnace, that means they are going to run out the billets that are in the furnace.

Q. Is it a custom of the company to stop charging the furnace when they are going to close down?

A. Yes, sir.

Q. When they stopped charging the furnace, and you say they started that at 7:30, what happened to what billets you already had? Where are they?

A. They have some in the furnace and they have to extrude them. If they don't they can't let them stay in but a [fol. 371] certain length of time. It will melt or cause blisters.

Q. Did anybody give you orders or instructions about helping finish up with this last batch of billets?

A. Yes.

Q. Tell the jury what those orders were.

A. Russell Woodard came and asked all to help, if they would stay and finish extruding the tubes that were left in the furnace.

Q. You were one of them?

A. I was.

Q. The only time you stay over and finish extruding billets is when you are closing operations down?

A. That's right.

Cross examination.

By Mr. Wilkinson:

Q. What is it now that you put in the furnace? Copper billets?

A. Yes, sir.

Q. It is heated to a pretty high heat?

A. Yes, sir.

Q. Then that billet is taken out of the furnace and conveyed to your press?

A. Yes, sir.

Q. Is that the process?

A. Yes, sir.

Q. When it hits the press, it is pressed through a die of some sort there that makes a tube?

A. Yes, sir.

Q. That was the work you were engaged in, doing?

A. Yes, sir.

Q. Woodard was the press operator?

A. Yes, sir.

Q. The man in charge of that operation?

A. Yes, sir.

Q. You were helping. Is that correct?

A. Yes, sir.

Q. How long had you been working there?

A. Approximately two years.

Q. Approximately two years?

A. Yes, sir.

Q. Had there any preparations ever been made for [fol. 372] closing the plant in the two years previous to this time?

A. Not as I know.

Q. Was it closed any time during the two year period you were there?

A. No.

Q. Holiday sometimes?

A. All plants do.

Q. Did they close on holidays?

A. Sure.

Q. Did they close down for repairs occasionally?

A. At one time they might have, but when they did, I worked in the other part of the plant.

Q. A short time before this strike went on, didn't they close down a week for some repairs?

A. Certain parts of the plant did, but I worked in a different part.

Q. Did they close the part that the furnaces were in?

A. That's right.

Q. And each one of those incidents, where they closed down or shut down or had a cessation of work, was arranged for by putting notices on the bulletin board that the plant would close and there would be no work in that department at a certain time?

A. That's right.

Q. Nothing was put on the bulletin board that this plant would not operate on July 18th?

A. I don't know.

Q. You didn't see anything there?

- A. I didn't see it.
- Q. You saw the bulletin board, didn't you?
- A. I saw it.
- Q. It was in plain view when you came out there?
- A. Yes, sir.
- Q. What was the capacity of that furnace? How much copper would it hold?
- A. Approximately 142 billets.
- Q. Approximately 142 billets?
- A. Yes, sir.
- Q. Each billet weighed about how much?
- A. I don't know how much. About 50 pounds, I guess.
- Q. How much copper was left in the furnace that morning when you left there, or did you work it all out?
- [fol. 373] A. It wasn't all worked out.
- Q. You left some in the furnace?
- A. Yes, sir.
- Q. How much was left?
- A. I don't know.
- Q. Approximately how much?
- A. Half a furnace, I guess.
- Q. And if that copper had not been worked ou' of the furnace, what would have happened to the furnace?
- A. I don't know myself, but from the talk it would probably melted.
- Q. If it had been kept heated up, it would have melted?
- A. For a certain length of time, it would not, but if it was left over that time they would usually run it out and put it in the tank of water.
- Q. Suppose it was kept heated, what would have happened?
- A: I wouldn't know.
- Q. Ruin the furnace?
- A. It was supposed to if it was kept in there so long.
- Q. It was essential in the ordinary operation of the plant to work that copper out of the furnace?
- A. That was the usual procedure.
- Q. That was the usual procedure. And did you say that Russell Woodard asked the help to stay and work the copper out?
- A. That's right.

Q. You all didn't do it?

A. That's right.

Q. Left it in there. Did you belong to the union at that time?

A. Yes, sir.

Q. Did you attend a union meeting the afternoon before?

A. Yes, sir.

Q. What time was the meeting held that you attended?

A. It was about 4:30.

Q. About 4:30. How long were you in that meeting?

A. I stayed until it was over.

Q. When was it over?

A. It don't last any certain length of time. About a hour.

Q. The meeting broke up about 5:30?

A. Something like that.

Q. You went to work at 12 o'clock at the plant?

A. That's right.

[fol. 374] Q. Worked until eight the next morning?

A. Eight the next morning.

Q. Did you tell anybody at the plant that the union voted to strike at eight the next morning?

A. No.

Q. Did anybody tell you, outside of the union meeting, that they voted to strike the next morning?

A. No.

Q. No information of that kind was conveyed to you outside of the union meeting?

A. No, sir.

Q. I will ask you, Mr. Witness, if they had any specified time to charge that furnace during the day or the night?

A. It usually stays charged from one shift to the other.

Q. What do you mean by that?

A. When they start charging the furnace, it stays that way. The next shifts come in and take over.

Q. Recharges it?

A. They don't run everything out every night.

Q. They have no specified time in which billets are to be put into the furnace?

A. They keep the billets in the furnace at all times while running.

Q. Under their practice out there, they put one in after one is run out?

A. When one comes out, another is put in. Arms puts them in.

Q. When you say they stopped charging at 7:30, you mean they didn't put any more billets in the furnace at that precise time?

A. Yes, sir.

Q. Did they take any billets out at 7:30?

A. They extruded the tubes on up to eight and then we left.

Q. Any tubes manufactured between 7:30 and 8 o'clock that morning?

A. Yes, sir.

Q: In your machine?

A. Not mine. Everybody's machine that worked on the press. It takes five men to run one.

Q. One operator and four helpers?

A. That's right.

Q. The other men were helpers?

A. That's right.

[fol. 375] Q. You tell the jury there was tube manufactured between 7:30 and 8?

A. We were there until 8.

Q. Was there actually tubing manufactured between 7:30 and 8?

A. Yes, sir.

Q. How much?

A. I don't know.

Q. Approximately how much?

A. Approximately 40 tubes.

Q. Approximately 40 tubes. In the 30 minutes between 7:30 and 8?

A. Yes, sir.

Q. You left the furnace, you say, half full when you left?

A. Approximately.

Q. How many tubes could be manufactured out of a furnace half full of copper?

A. Sir?

Q. How many tubes would be manufactured out of a furnace half full of copper such as that was?

A. In a half hour?

Q. How many tubes would that much copper make?

A. There was about 80 something tubes left in there, I guess.

Q. So that the 40 tubes you manufactured between 7:30 and 8 used about one-fourth of the copper that was in the furnace?

A. Approximately.

Q. You know who used up the rest of the copper in there?

A. No.

Q. Or what was done with it?

A. No, sir.

Q. When you came out of the plant, was the picket line across Railroad Avenue and just at the property line?

A. There was a picket line out there.

Q. Where was the picket line? Near the entrance of the plant?

A. There was so many people all over the place, you could hardly tell.

Q. You know where the entrance of the plant is?

A. I know where the gate is.

Q. I am talking about where they have a sign there on the side of the road.

A. It was up next to the railroad.

Q. I show you Plaintiff's Exhibit "3" looking into the [fol. 376] plant. Here's the sign on the side of the road. "End of Private Highway" and the company property begins, and there are the tracks. Where was the picket line with reference to the railroad?

A. (Indicating) Right around here.

Q. Between the railroad and the plant?

A. On the railroad.

Q. You mean right on the railroad?

A. Yes, sir.

Q. Right on the railroad and some this side of the railroad?

A. Yes, sir.

Q. When you say "this side" which direction would that be?

A. I don't know. On this side of the railroad. I don't know who owns it.

Q. How many were on the picket line when you came out?

A. I don't know how many was on it.

Q. About how many?

A. I don't know. There was so many people around, I couldn't tell.

Q. You saw a picket line in a circle. How many men were in the circle?

A. About 100, or 50, I guess.

Q. They were about three or four feet apart, intervals between them?

A. There was lots of people; I couldn't hardly tell.

Q. The intervals between the men walking in the picket line about three or four feet?

A. Approximately, yes, sir.

Q. Did you remain there the rest of the morning?

A. No.

Q. How long did you stay there?

A. Half an hour.

Q. Did you see Russell's car come up?

A. No.

Q. Did you know Russell at that time?

A. I didn't know him.

Q. Did you see any cars come up and stop?

A. No.

Q. Didn't see any automobiles there at all?

A. I didn't see any.

Q. Did you speak to anybody on the picket line?

A. Nobody but just friends around.

Q. Did you know anybody on the picket line?

[fol. 377] A. I knew the fellows that was walking the picket line.

Q. What was their names?

A. Norman Ange.

Q. You saw Mr. Ange. Who else?

A. Most of the guys that worked first shift was out there.

Q. Do you know their names?

A. Part of them.

Q. Give me the names of all you saw that you recognized.

A. Jim Sumnerford. Howard Hovis. How many should I name?

Q. All you recall.

A. Most everybody that worked out there that was in the union was there.

Q. I am speaking of the men moving in this circle.

A. That was about all I seen that I knew.

Q. Did you walk the picket line any?

A. On the third shift.

Q. Who did you get your instructions from about walking the picket line?

A. They had certain men that was supposed to take care of it. I don't know. They gave me the time I was supposed to be there.

Q. Who gave it to you?

A. Carl Montgomery.

Q. He gave you a slip showing the day and hour you were to walk?

A. He told me what time, and that is what time I reported.

Q. And the union paid you while you walked the picket line?

A. No.

Q. Furnished you groceries?

A. Yes.

Q. Paid your house rent?

A. Not mine. I didn't need any house rent paid.

Q. Furnish you money for any other purposes?

A. I didn't ask for any.

Q. Did they furnish you?

A. No.

Q. The sole compensation you got was groceries while you were off on strike?

A. And some gas.

Q. And some gas?

A. Yes, sir.

[fol. 378] Q. Were you out there on the 20th when the dinky locomotive tried to pull some cars of copper in the plant?

A. No, sir.

Q. You don't know anything about that?

A. No, sir.

Q. Where were you at that time?

A. Probably in the bed asleep.

Q. During the shift that you worked on, how frequently did they put billets into the furnace?

A. One bring the billets out—most of the time, there are two arms, one puts it in, another takes it out.

Q. They were taking them out on up until the time you left there. When one takes one out, they put one in?

A. Not every time. The one on the left, you could work that without putting the billets in.

Q. You were putting billets in up until you went out?

A. No.

Q. When did you quit?

A. 7:30.

Q. You were putting them in until 7:30?

A. Approximately 7:30.

Re-direct examination.

By Mr. Adair:

Q. They stopped putting billets in at 7:30?

A. That's correct.

JAMES H. BURKS, next witness for the defendants, being first duly sworn, testified:

Direct examination.

By Mr. Adair:

Q. Your name is James H. Burks?

A. Yes, sir.

Q. James, do you work at Mr. Winton's horse stable?

A. Yes, sir.

Q. That's where you are working now?

A. Yes, sir.

Q. What is the nature of your work?

A. I work seven days a week.

Q. From seven 'til eight?

[fol. 379] Q. Seven days. From six to five-thirty in the afternoon.

Q. From six to five-thirty in the afternoon?

A. Yes, sir.

Q. You live in Decatur?

A. Yes, sir.

Q. How long have you been living here?

A. About twenty-six years.

Q. Did you ever work at the copper plant?

A. Yes, sir.

Q. Were you working there at the time the strike come off?

A. Sure was.

Q. Do you recall the day of the strike? You remember the strike?

A. Yes, sir.

Q. Were you at work on the 18th day of July, 1951, which was the day of the strike?

A. Sure was.

Q. What time did you go to work?

A. 4:30.

Q. A. M.?

A. Yes, sir.

Q. What kind of work did you do?

A. Janitor.

Q. Janitor?

A. Yes, sir.

Q. Who was your boss?

A. Howard Hughes.

Q. Did Mr. Hughes give you any instructions that morning?

A. He told me the plant was going to be shut down and to go home and stay until after it was settled.

Q. He said that the plant was going to be closed and for you to go home and stay until everything was settled?

A. Yes, sir.

Q. What time of the morning was that?

A. About 7:50.

Q. What did you do when he told you that?

A. I come on and went on out.

Q. Did you stay around outside of the plant on the picket line?

A. No, sir.

Q. What did you do?

[fol. 380] A. I came on home.

Cross examination.

By Mr. Wilkinson:

Q. James!

A. Yes, sir.

Q. You were working as a janitor out there?

A. Yes, sir.

Q. How long had you been a janitor out there?

A. About 32 or 33 months.

Q. And the first that you knew anything about the plant supposed to be closed down was when Hughes told you that morning?

A. No, sir, I went to him and asked him that morning what muss I do.

Q. That morning?

A. Yes, sir.

Q. What time did you go to him?

A. Just about 7:50 when I come out.

Q. That was the first you knew that the plant would be closed down? You had not heard about it before then?

A. No, I can't recollection it. I can't remember anything else about that.

Q. Is it a fact that the first information you had about the plant closing was when Hughes told you about it that morning when you went and asked him what you must do?

A. That wasn't the first I heard. I heard it through the mill working.

Q. I am talking about any information you had from a company official.

A. That was all the information.

Q. Mr. Hughes was the only man connected with the company that discussed that with you?

A. Yes, sir.

Q. I didn't get your full statement. He told you—tell the jury again.

A. He told me that the whole plant was going to be shut down; for me to go home until things was settled.

Q. He told you that the whole plant was going to be shut down and for you to go home until things were settled?

A. Yes, sir.

Q. And that was in response to your inquiry as to what you must do? Is that right?

[fol. 381] A. That's what he told me.

Q. You asked and he told you?

A. Yes, sir.

Q. What did he say to you about you might get hurt on the picket line?

A. He didn't say anything to me about the picket line.

Q. What he say about you might get hurt if you came back there?

A. He didn't tell me anything about the picket line.

Q. Did you discuss getting hurt at all? You never said nothing and he said nothing about getting hurt?

A. Not about the picket line at all.

Q. That wasn't mentioned?

A. No, sir.

Q. Did you go on home?

A. I went on home.

Q. You quit work at 7:50?

A. Yes, sir.

Q. Did you go back to work at any time after the strike started?

A. No, sir.

Q. Haven't been back to work since?

A. No more than at Mr. Winton's.

Q. I mean at the plant.

A. No, sir.

Q. You haven't been there since?

A. When we got orders—after we withdrew the picket line, I went to the plant one time.

Q. After you withdrew the picket line, you went to the plant?

A. Yes, sir.

Q. When you came out, did you go through the picket line?

A. There was one out there.

Q. I mean that morning when you left that morning at 7:50?

A. Yes, sir.

Q. How many men were picketing?

A. I couldn't count them.

Q. In your best judgment?

A. A good deal out there.

Q. 35, 40, 50?

A. I couldn't tell you exactly. A good deal.

Q. I am not trying to pin you down to any number. Just what about the size of the crowd?

[fol. 382] A. It was about as many as in the court room here, I believe, to my estimation.

Q. Pretty good crowd?

A. Yes, sir.

Q. When you came out at 7:50, left the plant, did you stay in the vicinity of the picket line?

A. No, sir.

Q. You went on home?

A. Yes, sir.

Q. You a member of the union?

A. At that time.

Q. Member now?

A. Yes, sir.

Q. You still a union man?

A. Yes, sir.

Q. Did you walk the picket line any?

A. Yes, sir.

Q. When did you start walking?

A. At night.

Q. Did you walk, picket that night?

A. Not that night.

Q. Walk the second night?

A. Second, yes, sir.

Q. Every night after that?

A. Not every night.

Q. Every other night?

A. Yes, sir.

Q. You were getting groceries while you walked the picket line?

A. Yes, sir.

Q. Furnished money for anything else?

A. Yes, sir.

Q. House rent?

A. Yes, sir.

Q. What else?

A. Doctor bills.

Q. What else?

A. Schooling for my children. Books for my children going to school.

Q. Anything else?

A. No, sir, that's all.

[fol. 383] Q. They paid for books for your children for school, doctor bills, groceries and house rent while you were walking the picket line?

A. Yes, sir.

Q. Who was the picket captain that you were walking under while you were on the picket line?

A. Mr. Bradshaw was my captain.

Q. He told you when you walked the picket line not to let anybody through?

A. No, sir.

Q. What did he say?

A. He told me to go out and get to walking the picket line. I didn't try to keep anybody out.

Q. He told you go to walking and you didn't try to keep anybody out?

A. Yes, sir.

Q. What were you picketing for?

A. I don't know.

Q. Wasn't trying to keep anybody out of the plant?

A. No, sir, I wasn't.

Q. Wasn't anybody there who could get in there?

Mr. Adair: I think he is arguing with the witness now. Whether or not he wanted so many people in there is immaterial.

Court: Let it go. He said he didn't know.

Q. Did you have any discussion with the union men about turning people through the picket line out there? Did they have any discussion with you about turning people through the picket line?

A. No, sir.

Q. You just don't know what you were picketing for, do you?

Court: Do you know what you were picketing for?

Witness: Yes, sir.

Court: What?

Witness: For my rights.

Q. What were your rights?

A. Better earnings for a living.

Q. Better earnings for a living? That all?

A. Yes, sir.

Q. "Yes, sir?"

A. Yes, sir.

[fol. 384] W. A. BOWLING, next witness for the defendants, being first duly sworn, testified:

Direct examination.

By Mr. Adair:

Q. Your name is W. A. Bowling?

A. Yes, sir.

Q. Bowling?

A. That's right.

Q. You live in Decatur?

A. Yes, sir.

Q. What is your address?

A. 314 Eighth Avenue Northwest.

Q. You a married man? Family man?

A. Yes, sir.

Q. Have children?

A. One.

Q. How long have you been living here?

A. About seven year.

Q. Where did you come from?

A. Trinity, six miles out.

Q. Mr. Bowling, were you working at the copper plant at the time of the strike there on July 18, 1951?

A. Yes, sir, I was.

Q. What shift were you working on?

A. Third shift.

Q. Third Shift. What hours?

A. Twelve midnight to eight in the morning.

Q. Did you work from twelve midnight on the 17th to eight o'clock the morning of July 18, 1951?

A. Yes, sir, I did.

Q. What was the nature of your work?

A. Millwright.

Q. That was what you were doing on that occasion?

A. Yes, sir.

Q. Who was your immediate foreman?

A. Norman Sparkman.

Q. Did Mr. Sparkman give you any instructions between twelve midnight and eight o'clock on the morning of the 18th?

A. Yes, he did.

[fol. 385] Q. Tell us what was said.

A. We was talking that morning about six o'clock and he told me that—I told him I would see him tomorrow night. He said, "No, I don't guess you will for the gates are going to be locked until this thing is settled; therefore, I won't see you."

Q. What time did you go out?

A. About 8:15 or 8:20.

Q. Did you do anything in the plant before you went out?

A. No, sir, other than change clothes.

Q. Did you have showers in there?

A. Yes, sir.

Q. Take a shower?

A. Yes, sir.

Q. After you showered and changed clothes, what did you do?

A. We have quite a walk from over at the engineering department to the parking lot. We walked to the parking lot, got in *and* car and came out.

Q. Stopped at the picket line?

A. No.

Q. Where did you go?

A. I came on home.

Q. Did you notice a picket line moving in a circle out there?

A. Yes, sir, I did.

Q. Did you get your car through it alright?

A. Yes, sir.

Q. Could you estimate just how many pickets there were on that occasion, I mean people moving in the circle?

A. There was somewhere between 10 and 15, 12 or 15; something like that.

Q. When you drove your car coming up out of the picket line, how did you get through?

A. They parted and we came right on through.

Q. Were you a union member?

A. Yes, sir.

Q. Did you do any picket duty out there?

A. Yes, sir.

Q. What was the first occasion, if you remember, that you did picket duty?

A. The night of the 18th at twelve o'clock.

[fol. 386] Q. Twelve o'clock midnight on the 18th?

A. That's right.

Q. Was your picketing done on the same shift that you worked on or you would have been working?

A. For about two weeks it was.

Q. How was the picketing conducted on that third shift there?

A. We had a picket captain—

Q. Who was he?

A. Joe Clark.

Q. Joe Clark?

A. Yes, sir.

Q. How did you work it?

A. When we went in, he had us line up—the list—we walked twenty minutes and off so long, and he would call our names when our time was to walk.

Q. How many pickets were usually there circling, if they were circling on the third shift?

A. Most of the time wasn't more than about three. Sometimes it got down to two.

Q. Do you remember how many there were on the 18th on the third shift?

A. No, sir, I don't know for sure.

Q. You have any idea as to how many?

- A. I would estimate about 10, 8 or 10.
Q. On that night?
A. Yes, sir, on that particular night.

Cross examination.

By Mr. Harris:

Q. You were a member of the union at the time of the strike?

A. Yes, sir.

Q. How long had you been a member?

A. Over a year.

Q. Norman Sparkman wasn't your full foreman?

A. Assistant foreman.

Q. He had only been assistant foreman about a month, had he?

A. Yes, sir.

Q. He a member of the union up until a month before this strike?

A. Yes, sir.

Q. Who was over him?

A. T. H. Hughes.

[fol. 387] Q. Mr. Hughes didn't tell you anything about shutting down?

A. I didn't see him.

Q. You had been to a meeting of the union that afternoon?

A. No, sir, I had not.

Q. You belonged to it?

A. I belonged.

Q. Did anybody notify you of the meeting?

A. I over-slept that afternoon.

Q. You meant to get there, but you over-slept?

A. Yes, sir.

Q. When you went to work that night, did you ask any of the fellows what they did at the meeting?

A. We talked.

Q. What did they tell you?

A. They told me what they done.

Q. That they voted to strike?

A. That's right.

Q. You knew you were not going back to work the next night?

A. That's right.

Q. What did you tell Norman Sparkman you would see him the next night for?

A. I didn't know for sure it would be out there.

Re-direct examination.

By Mr. Adair:

Q. Is Norman Sparkman immediately over you?

A. No, sir, he wasn't. He was at that particular time.

Q. At that particular time he was?

A. He was.

Q. And what were the words you said you spoke and what did he say to you?

A. We had a little discussion. We were good friends—

Mr. Harris: We object; that's repetitious.

Court: It is.

Mr. Adair: I won't insist on it. That's all.

Hoyt Grizzard, next witness for the defendants, being first duly sworn, testified:

Direct examination.

By Mr. Adair:

[fol. 388] Q. Your name Hoyt Grizzard?

A. That's right.

Q. Where do you live, Mr. Grizzard?

A. 1405 Eighth Street Southeast, Decatur, Alabama.

Q. How long have you lived here?

A. In Decatur?

Q. Yes.

A. About nineteen years.

Q. Have you ever worked at the copper plant?

A. Yes, sir.

Q. Working there at the time of the strike on the 18th of July, 1951?

A. Yes, sir.

Q. Did you attend a union meeting on the 17th day of July, 1951?

A. I did.

Q. You remember what hour?

A. Approximately one o'clock.

Q. Were you a second shift man?

A. Yes, sir.

Q. What was your job?

A. I was an oiler.

Q. Oiler?

A. Yes, sir.

Q. Were you on the picket line the first day of the strike?

A. Yes, sir.

Q. I will ask you whether or not on the first day of the strike you had any conversation with Mr. Oakes, Personnel Manager, of the company?

A. Well, on the first day of the strike, Mr. Oakes came by and called for Mr. Duncan, and so I go out with Duncan to where he was talking with Mr. Oakes.

Q. You say you went out with Duncan to where Oakes was?

A. Yes, sir. Mr. Oakes was coming in about 7:30 and he called for Duncan. So I go out to the car where Mr. Oakes was with Duncan.

Q. Did you hear the conversation?

A. I did.

Q. What was it?

A. He said, "Mr. Duncan, there was something I forgot to tell you yesterday." He said, "All salaried employees will have a card", and he pulled out a card from his billfold. "You will see these run from number two thousand to four thousand."

[fol. 389] Q. Anything else?

A. That is all I recall.

Q. You know Tommy Breeding?

A. I do.

Q. You know whether or not he is plaintiff in one of these cases like Mr. Russell's?

VOLUME II
TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1957

No. 21

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AIRCRAFT AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW-CIO), AN UNIN-
CORPORATED LABOR ORGANIZATION, AND
MICHAEL VOLK, AN INDIVIDUAL,
PETITIONERS.

v.s.

PAUL S. RUSSELL

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF ALABAMA

PETITION FOR CERTIORARI FILED SEPTEMBER 15, 1956
CERTIORARI GRANTED NOVEMBER 19, 1956

Mr. Harris: We object; immaterial, irrelevant. Mr. Breeding has not testified in this case, has nothing to do with the issues in this case.

Court: Right now, I can't see. For the present, I overrule.

Mr. Harris: We except.

Q. Do you know whether or not he is plaintiff in one of these cases?

A. Well, according to the paper, he did have a suit.

Q. You don't know yourself?

A. No.

Mr. Wilkinson: We move to exclude the statement on that point.

Court: He hasn't got any evidence yet.

Q. Did you have a conversation with Tommy Breeding on the picket line?

A. Yes, sir.

Mr. Harris: We object to that; immaterial, irrelevant and hearsay.

Court: I will let in the fact he had a conversation.

Mr. Adair: We were going to offer, not for the truth of the thing, but to negative any malice on the part of this man or any of the defendants.

Court: I can't pass on it until I know what the evidence is.

Mr. Wilkinson: I don't see how they can negative malice. If it's true—

Mr. Adair: I don't like the insinuation that what we are presenting isn't true.

Court: Go ahead.

Q. Did Mr. Breeding make any statement to you about the company gates being closed?

Mr. Harris: We object; immaterial, irrelevant, hearsay.

Court: Sustained.

Mr. Adair: We offer this, not for the truth of the assertion, but to negative any malice on the part of this man or any member of this organization.

[fol. 390] Mr. Adair: We except.

Court: Breeding isn't an official of the company?

Mr. Adair: No, sir.

Q. After you and Mr. Duncan had finished talking to Mr. Oakes and Oakes told Duncan that salaried employees would be known because of the identification cards they would have, what did you and Mr. Duncan do then?

A. We walked back over to the picket line.

Q. Did he pass out any instruction then or information about how the salaried employees would be identified?

A. By me being a picket captain, I was interested in knowing but I suppose he told the rest; I don't know.

No cross examination.

THEO T. MORRIS, next witness for the defendants, being first duly sworn, testified:

Direct examination.

By Mr. Adair:

Q. Your name is Theo T. Morris?

A. Yes, sir.

Q. Where do you live, Mr. Morris?

A. 404 Seventh Avenue Northwest.

Q. In Decatur?

A. Yes, sir.

Q. Your family live in Decatur?

A. Yes, sir.

Q. Mr. Morris, were you working at the copper plant at the time of the strike on the 18th of July, 1951?

A. Yes, sir.

Q. What shift were you on?

A. Second shift.

Q. What hours did that shift work?

A. From four in the afternoon to twelve midnight.

Q. What was your job?

A. Pin and die chrome plater.

Q. Were you out on the morning of the 18th?

A. Yes, sir.

Q. Do you know the plaintiff in this case, Paul Russell?

A. Yes, sir.

Q. Did you know him then?

[fol. 391] A. Yes, sir.

Q. Did you see him come up on that morning?

A. Yes, sir.

Q. Well, tell the jury just what you observed.

A. He just drove within a few feet of the picket line and stopped and sat in his car and never did get out.

Q. Did you see anybody around his car talking to him?

A. Three or four of the boys were around the car talking to him, but I don't know what was said.

Q. How far away was you?

A. Just a few feet.

Q. You couldn't understand what was being said?

A. No, sir.

Q. Was the conversation loud enough you could hear it?

A. I could have heard, I guess, if I was trying to hear, but there was a lot going on and I wasn't paying any attention.

Q. Did you hear any loud exclamations at the car between the people talking to Russell?

A. No, sir.

Q. You remember who it was talking to Russell?

A. I believe Hovis was one, and I don't remember who else. Three or four around the car; maybe more.

Q. You remember hearing any outcry from the crowd?

A. No, sir.

Q. Any threats?

A. No, sir.

Q. You didn't hear any?

A. No, sir.

Q. Do you know how the gate operates out there at the plant as far as being opened and closed normally before the strike?

A. Yes, sir.

Q. How?

A. They would open the gate when the shift started to change for the men to go in and left it open until, like it was four o'clock, until all the four o'clock men went in and they would close the gate and open the other side and let the men that got off in the afternoon come out.

Q. How long would they leave it open?

A. Until all the men got out of the plant.

Q. Do the same thing in the morning?

[fol. 392] A. Yes, sir.

Q. Did the gate operate in the same manner on the 18th of July, 1951?

A. No, sir.

Q. How did it operate on that morning?

A. When was several cars come on together, they would open and let them through and close it until some more came.

Q. You mean let them in by groups or one at a time?

A. If there was a group, they let them all in. If they come in single, they would shut the gate behind them.

Q. Did you do any picketing?

A. Yes, sir.

Q. What hours did you picket?

A. Four in the afternoon to twelve midnight.

Q. Did you picket from four to 12 at night the first day of the strike?

A. Yes, sir.

Q. Who gave you, who assigned you to picket duty?

A. Olan Drake, I believe, was the one that was one of the committee making up the picket lists at that time.

Q. How did you find out when you were supposed to picket?

A. We were told by one of the committee when we were supposed to picket.

Q. How often did you picket?

A. At first, every night, and then, every other night, after about a week or ten days.

Q. How many pickets were out on the second shift ordinarily?

A. From 40 to 50.

Q. Would there be that many walking?

A. No, sir.

Q. How many would they use actually picketing?

A. Five or six.

Q. You mean the 40 or 50 were on the list, and they rotated the men between them for second shift?

A. Yes, sir.

Cross examination.

By Mr. Harris:

Q. You belonged to the union on July 18th?

A. Yes, sir.

Q. You still belong to it?

A. Yes, sir.

[fol. 393] Q. On the morning of July 18th when the third shift came out, how did they operate the gate?

A. Well, the best I can remember, they just opened the gate until they all came out.

Q. In other words, they opened it and it stayed open until they all got out?

A. The best I can remember.

Q. They have a gate on each side of the gate house?

A. Yes, sir.

Q. One for entrance and the other for exit?

A. Yes, sir.

Q. So that gate stayed open until they all got out, like it always had?

A. Yes, sir.

Q. Wasn't anybody getting in through the entrance gate on that morning?

A. Nothing but the salaried employees.

Q. Just be a straggling car every now and then?

A. Yes, sir.

Q. When they would come, they would open the gate and let them in and close it?

A. Yes, sir.

Q. That had been the practice all the time; when one would come to open and let it in and close it then?

A. Yes, sir.

Q. No hourly paid men got in on July 18th, did they?

A. No, sir.

Q. You say you started out picketing every night?

A. Yes, sir.

Q. And dropped off to every other night?

A. Yes, sir.

Q. The number of pickets you were using dropped off after the beginning of the strike?

A. Yes, sir.

Q. Then it increased again before the plant reopened?

A. Yes, sir.

Q. Just before this plant reopened, did you start picketing every night?

A. Yes, sir.

[fol. 394] Q. When did you start that?

A. I don't remember. About two or three days probably.

Q. When it was was when the company published this full page advertisement in the paper they were going to reopen the plant?

A. Yes, sir, a day or two before.

CLIFFORD CORUM, JR., being first duly as a witness for the defendants, testified as follows:

Direct examination.

By Mr. Adair:

Q. Mr. Corum, where do you live?

A. Huntsville.

Q. Huntsville?

A. Yes, sir.

Q. Have you ever lived in Decatur?

A. Yes, sir.

Q. How long have you been in Huntsville?

A. Two weeks.

Q. Prior to that, where did you live?

A. Decatur.

Q. How long have you lived here?

A. Thirteen years.

Q. Thirteen years?

A. Yes, sir.

Q. Where did you come from before you came here?

A. Lawrence County.

Court: Down about Courtland?

Witness: Yes, sir. Moulton.

Q. Mr. Corum, were you working at the tube plant when the strike came off in July, 1951?

A. Yes, I was working at Wolverine.

Q. Mr. Corum, what was your job at Wolverine?

A. Machinist.

Q. Machinist?

A. Yes, sir.

Q. Did you know Mr. A. J. Crites, foreman, out there?

A. Yes, sir.

Q. Did you have a conversation with him about whether or not the plant would be closed?

[395] A. He gave an opinion.

Q. What did he say?

Mr. Harris: We object to his opinion.

Court: You can tell what he said.

A. He said that he believed that if a strike was called, the plant would be closed during that time, the gate would be closed during the time the strike was in progress until it was settled.

Q. How long was that before the strike took place?

A. I would say a few days, possibly a week.

Q. Were you in the picket line on the morning of July 18,

17.

A. No.

Q. Where were you?

A. Home.

Q. Home?

A. Yes, sir.

Q. Were you a member of the union?

A. Yes, sir.

Q. Had you attended a union meeting on the 17th, either one of them?

A. Yes, sir.

Q. You remember which meeting?

A. 4:30—I beg your pardon: 1 o'clock. I was on the second shift working. I attended the one o'clock meeting that day.

Q. You didn't come out during the next morning?

A. No.

Q. At this one o'clock meeting on the 17th, how many people would you estimate were there?

A. 115 or 120.

Q. 115 or 120?

A: Yes, sir.

Q. Did you have some tools in the plant?

A. Yes.

Q. You worked as a machinist?

A. Yes, sir.

Q. Had your own tools?

A. That's correct.

Q. When the strike came off, were your tools inside or outside?

A. Inside in the machine shop.

Q. Did you make any attempt to get them?

A. Yes, sir.

[fol. 396] Q. What did you do?

A. I went down to the gate and asked could I have them.

Q. Is that the gate—you talking about the entrance to the plant where the guards are?

A. Yes, sir.

Q. Who talked to you?

A. One of the guards.

Q. Did he tell you could or could not go get them?

A. I could not go get them, but they would bring them to me.

Q. Did they bring them to you?

A. Yes, sir, one of the engineers brought them to me.

Q. Where did you stay while they brought them?

A. Up at the gate.

Q. When was that? You know?

A. That was approximately 3½ weeks after the beginning of the strike.

Q. Do you remember attending a meeting here in the court house in this same court room that had been advertised as a back to work meeting sometime in August, 1951?

A. Yes, sir.

Q. Mr. Paul Russell, the plaintiff here—was he the head man at that meeting?

Mr. Harris: We object; that calls for this witness' mental operation; his opinion.

Mr. Adair: I withdraw that question.

Q. Was Mr. Paul Russell in charge of that meeting?

Mr. Harris: We object on the same ground.

Mr. Adair: I withdraw that.

Q. Was Paul Russell the man doing the talking at that meeting?

A. Yes.

Q. Same man, the plaintiff there?

A. Yes, sir.

Q. What did he tell that meeting of folks on that occasion?

A. Well, I think he stated they had some new petitions to sign; that there was something wrong with the first one and anyone that wanted to sign could come up and do so. That was about there was to it.

Q. Did he state what was wrong with the first petition?

A. Something about the words. I am not sure.

Q. Did he say who changed the words of it?

A. No, he said that a lawyer had told them that this [Vol. 397] particular thing was wrong, but he didn't say who.

Q. Did he have typewritten petitions here with him at day?

A. Yes.

Q. Did he make any statement about whether or not he thought the company would reopen the gates?

A. I don't know.

Q. Was any such statement made at that meeting that you recall?

A. Not that I know of.

Q. Was the contents of the petition discussed at that meeting, the subject-matter of the petition?

A. I don't remember if it was.

Q. You sign the petition?

A. No.

Q. Where are you working now?

A. I work for the Army Ordnance over on Redstone Arsenal.

Q. Up at the Arsenal?

A. Redstone Arsenal, Huntsville.

Q. Did you work the second shift on the 17th of July, 51?

A. Yes, I worked part of the shift. I didn't work the whole shift.

Q. What time did that start?

A. Four in the afternoon.

Q. You say you worked part of it. How did that happen?

A. I checked out sick that night.

Q. You know about what time you checked out sick?

A. No, I don't know. I believe I only worked two hours.

I think I checked out at six that afternoon.

Q. Were you still sick the next day?

A. Yes, sir.

Q. Did you do some picketing after that?

A. Yes, sir.

Q. What hours did you picket when you picketed?

A. Most of the time I was on night. First, the afternoon shift the same as I was working at the plant from four until twelve at night, and I did some day shift.

Q. Who told you when to picket and when not to? Who did you receive those instructions from?

A. I don't think I did receive any.

Q. How did you know?

A. Well, it was just pretty well worked out among us. [fol. 398] If we could, to picket on the same shift we were working, but if we had other plans that interfered we could ask the picket captain to change us around.

Q. About how many pickets did you have walking at a time?

A. At first on the day shift, I suppose about six. They cut that down to four later on. At night, sometimes we had as small amount as two.

Q. Did you ever see the plaintiff, Russell, at the picket line?

A. No.

Q. While you were walking?

A. No, not until the plant was reopened.

A. Did you see him go in on the first day the plant was reopened?

A. Yes, I believe so.

No cross examination.

CARL A. BRADSHAW, next witness for the defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Adair:

Q. Your name Carl A. Bradshaw?

A. Yes, sir.

Q. You live in Decatur?

A. Yes, sir, all my life.

Q. What is your address?

A. 1312 Fifth Avenue Southeast.

Q. You married?

A. Yes, sir.

Q. Have children?

A. Two girls.

Q. Mr. Bradshaw, were you working at the tubing plant prior to the strike on the 18th of July, 1951?

A. Yes, I was one of the first hired in out there when it opened.

Q. You were one of the first hired out there?

A. Yes, sir.

Q. What was the nature of your work?

A. Millwright. I done most of the trouble shooting on the second shift, repairing breakdowns.

Q. Did you work on the 17th day of July, the day before the strike?

A. Yes, sir, second shift.

Q. You worked until twelve midnight on the 17th?

[fol. 399] A. Yes, sir.

Q. Did any company officials or supervisors give you any instructions or information about whether or not the plant was going to operate?

A. Sometime just before supper, me and Rip Rice was talking—

Q. Who is Rip Rice?

A. Second shift superintendent. I was repairing on the furnace. He always came by, and he asked me if I had it about ready. He said, "Well, Brad, do you think they're going to have a picket line up in the morning?" I said, "I am sure of that. I have had information to that effect."

He said, "Well, I'm going to Florida; just bought me a new Mercury and I'm going to Florida for a few days. I hope it's all settled by the time I get back, I am sure glad they are locking the gate because we've all got to work together when this thing is over."

Q. "All going to have to work together when this thing was over and don't want hard feelings"?

A. That's right.

Q. Did you get any further instructions or information from any other supervisor that evening?

A. The second shift millwright foreman was talking to me before quitting time—Norman Sparkman.

Q. What did he say to you?

A. He said that—we were just talking about things in general—he said, "Brad, I don't guess I will see you any more for a while. We won't be back before this is settled, and we don't want any hard feelings between us. I've got a brother on the other side of the fence." I said, "Yes." He said, "They're going to have the gates locked but they're going to let the foremen and personnel in, salaried employees in." I said, "Sure." He said, "Nobody going to feel hard at me for coming in" I said, "No, absolutely not."

Q. He was what kind of foreman?

A. He was classified as an assistant foreman. When Hughes left, he was in charge of the millwright department. Hughes left around six o'clock.

Q. Sparkman was in charge when Hughes left?

A. He's the man I got orders from.

Q. You working under him on this night in question when he made that statement to you?

A. Yes, sir; Norman L. Sparkman.

Q. Were you in the vicinity of the picket line on the 18th [fol. 400] day of July, 1951?

A. I got there about seven o'clock, I think; somewhere around that time.

Q. Do any walking?

A. Yes, sir.

Q. Were you there in that vicinity at the time the plaintiff in this case, Paul Russell, came by?

A. Yes, sir.

Q. Did you know him?

A. Yes, sir.

Q. Did you see him come up to the picket line?

A. Yes, sir.

Q. Will you tell the jury, the court and the jury, just what you observed there?

A. Well, I can't say who flagged him. Some of the boys were out there. The road was circled, I guess, with twenty-five pickets in the road. Russell stopped and I think he moved a little again, and he stopped again. The best I remember, Howard Hovis was the first that went up; he was in the door talking to him. They milled around his ear, twenty-five or thirty. I was around it, too, but he stayed there a good while and backed out and left.

Q. Did you hear any conversation that went on between Russell and Hovis or anybody else?

A. Approximately all was a talking, and I couldn't exactly understand what was being said between Hovis and Russell.

Q. Did you hear any threat between Hovis and Russell, any threat, cursing, anything like that?

A. No, sir, no threats.

Q. What kind of conversation would you say it was?

A. The best I could understand—of course, like I said, I was in the back—he was telling him the gates were locked.

Q. "He"? Hovis?

A. Howard Hovis.

Q. Did you hear what Russell was telling him?

A. No, I couldn't understand what all Russell said. He was awfully nervous and mad. He was talking but I couldn't say what he was saying.

Q. Did you do second shift picketing after that?

A. Yes, sir, as a picket captain up until the night we pulled the picket line.

[fol. 401] Q. How did you operate that picketing on the second shift?

A. We would, say around six o'clock after the salaried employees come out, cut the line down to three men until the third shift come. We usually had around twenty or twenty-five pickets. If it got to raining, sometime we didn't have but two. We would walk fifteen minutes and rest two hours.

Q. Not as many on the second shift as on the first shift?
 A. No, sir.

Q. Do you remember seeing anybody go down to the gate to get their tools?

A. Yes, sir, I guess we had been out a couple of weeks and some of the boys said they wanted to get their tools to go to work at Huntsville (I was offered a job there myself), and we let them go down. I didn't care who went down, two at a time.

Q. You let them in the plant?

A. They went in the guard's house, and the guards went over in the plant and got the tools.

Cross examination.

By Mr. Wilkinson:

Q. As I understand, you worked the night of the 17th to midnight that night?

A. That's right.

Q. You didn't work any more after midnight?

A. Haven't worked any more since then.

Q. This conversation you had with Rip Rice was on the night of the 17th, the last night you worked there?

A. Yes, sir.

Q. What time?

A. Before supper. We had supper at eight, and I would say it was around seven-thirty. I was trying to get the furnace fed so I could go eat.

Q. What time did you go to work that afternoon?

A. Four.

Q. Mr. Rice was on that night; was he on time?

A. Yes, sir; he was usually before time.

Q. He was there when you arrived?

A. Yes, sir.

Q. You positive about that?

A. I never seen him except in the plant. He goes by the main office building.

[fol. 402] Q. You positive you had that conversation that night?

A. Absolutely.

Q. Couldn't be mistaken about that?

A. No, sir.

Q. Did you know Mr. Rice left on the 15th and was in Florida on the 17th?

A. I don't think so.

Q. If he was in Florida on the 17th, and it appears he was in Florida, you would be mistaken about it?

A. It would be the last night he worked that we had the conversation.

Q. What was the last night he worked?

A. To my honest opinion, it was the last night I worked, on the 17th.

Q. You know what the last night he worked?

Mr. Adair: He answered that; now he's arguing.

Court: Overruled.

Mr. Adair: We except.

Q. Do you know when he left to go to Florida?

A. I didn't ask him.

Q. You know he went?

A. I know he said he was going. I didn't go down there.

Q. Did the union furnish you groceries while you were picketing?

A. Yes, sir.

Q. Did they pay any other expenses for you?

A. Yes, sir, they paid my light bill a couple of times and my water bill.

Q. What other money did they pay for you?

A. That's all I recall right now.

Q. You know that every man who picketed was paid by the union?

A. He wasn't exactly paid. They issued so many groceries according to the family.

Q. Groceries was as good as money, wasn't it?

A. They tasted pretty good.

Q. You know every man that worked at the picket line got groceries?

A. He would if he went down there.

Q. They all went?

A. I don't know.

Q. You know if they didn't picket, they didn't get paid?

A. We had a lot that got groceries that didn't picket; they went off to work.

[fol. 403] Q. Who?

A. I know one fellow by name, Neal Aycock, worked at Ingalls all the time.

Q. Did he picket without groceries?

A. He didn't picket at all. He went to work.

Q. Do you know of anybody that picketed that didn't get groceries?

A. No.

Q. And they paid such as rent, light bills, insurance, things like that?

A. I never heard no complaints on it.

Q. You say when Russell came up, some of the boys flagged him?

A. Yes.

Q. You know who?

A. No.

Q. How many did you say was milling around his car?

A. I would say twenty-five or thirty; I didn't count them.

Q. How far was that from the picket line?

A. I would say twenty or thirty feet.

Q. Twenty or thirty feet. How many were on the picket line at that time?

A. I would say around thirty.

Q. They have any sticks?

A. Not that morning, no, sir.

Q. Any clubs?

A. Not that morning.

Q. What morning did they have some?

A. After then, I got me a stick, because I had so much walking. I was second shift captain, and I carried a stick all the time. The City asked me to keep the road clear.

Q. On the 22nd when the picket line opened and the caravan went in that morning at eight, did you have your stick?

A. I had my stick in my hand.

Q. Were there several sticks there?

A. I never noticed nobody but mine.

Q. I will ask you this: Were you there when the dinky locomotive was interrupted?

A. Yes, sir.

Q. Did you see that?

[fol. 404] A. Yes, sir.

Q. How close were you to it?

A. I was on the side of it.

Q. Did you see Hovis?

A. Yes, sir.

Q. Webster?

A. Yes, sir.

Q. See the crowd on the track in front of the locomotive?

A. I was in it, yes, sir.

Q. Did you see Mrs. Hovis on the track?

A. Yes, sir.

W. M. WALLACE, next witness for the defendants, being first duly sworn, testified:

Direct examination.

By Mr. Adair:

Q. Your name is Mr. W. M. Wallace?

A. Yes, sir.

Q. Where do you live, Mr. Wallace?

A. 1207 West Moulton Street.

Q. Here in Decatur?

A. Yes, sir.

Q. How long have you lived in Decatur?

A. About nine years.

Q. Where did you come from?

A. Lawrence County, over close to Moulton.

Q. Your wife live here?

A. Yes, sir.

Q. You have children?

A. Yes, sir.

Q. Mr. Wallace, were you working at the tubing plant at the time of the strike in July, 1951?

A. Yes, sir.

Q. You remember what particular job you were doing out there?

A. Maintenance carpenter.

Q. Maintenance carpenter?

A. Yes, sir.

Q. Who was your foreman?

A. Mr. Hughes, Howard Hughes.

[fol. 405] Q. Mr. Howard Hughes?

A. Yes, sir.

Q. What shift were you working on?

A. First shift.

Q. Say the first shift?

A. Yes, sir.

Q. What hours?

A. Eight to four.

Q. Did you work on the 17th day of July, the day before the strike?

A. Yes, sir.

Q. Eight to four on that day?

A. Yes, sir.

Q. Did you attend a union meeting on that day?

A. Yes, sir.

Q. Where was that held?

A. Second Avenue over at the Union Hall, and on Second Avenue.

Q. Can you estimate how many people were in attendance at that meeting?

A. Somewhere around two hundred.

Q. What time in the afternoon was that meeting held, if you remember?

A. Four-thirty.

Q. What transpired at that meeting; what took place?

A. They told what they had done in negotiations and what had taken place and all and what they had been offered and they would not do.

Q. Was any action taken on negotiations?

A. Yes, sir. They taken—told what they had been offered and all and what they had offered the company and what the company turned down and they taken a vote to strike.

Q. Anything else?

A. That was after they had told about what they had, what had taken place over there.

Q. How did they vote?

A. Unanimous for striking. Everything voted for a strike.

Q. Everyone voted to strike?

A. Yes, sir.

Q. You recall any other reports or instructions you received at that meeting?

A. Yes, sir. They said they had offered Mr. Oakes standby men and he said he didn't need them. He had capable salaried men to take care of standby while the plant was [fol. 406] done, but no hourly rated men would be admitted until the strike was settled.

Q. No hourly rated men would be admitted until the strike was settled?

A. Yes, sir.

Q. That was reported at that union meeting at four o'clock?

A. Yes, sir.

Q. You recall Mr. Starling talking to that meeting?

A. Yes, sir, he was there; him and Mr. Duncan both talked.

Q. Mr. Starling give you any instruction about picketing?

A. Yes, sir, he give us instruction.

Q. What instructions did he give you?

A. He told us he wanted the picket line carried on in a mannerly way, no drinking; everything conducted right?

Q. How?

A. In a mannerly way.

Court: What sort?

Witness: Everything to go along peaceable and quiet.

Q. Were you out there the next day?

A. Yes, sir, I was out there a while.

Q. What time did you go out there?

A. I was out there that morning.

Q. At that time did you know the plaintiff, Paul Russell?

A. Yes, sir.

Q. Did you see him out there that morning?

A. Yes, sir.

Q. Will you tell the jury just what you saw in connection with Russell?

A. I saw Russell drive up and stop and some of them out talking to him, but I wasn't close enough to hear what

was said, and I don't recall who was talking out there at the car, and I was some twenty or thirty feet away and didn't pay any attention to who was talking to him.

Q. Did you notice anything unusual about the conversation?

A. No, sir.

Q. Did you continue to do regular picket duty or did you have some other assignment?

A. I was assigned to the grocery store issuing groceries.

Q. You were assigned to the grocery store issuing groceries?

A. Yes, sir.

Q. Will you tell the jury just how you went about that [fol. 407] issuing of groceries and how a man qualified to get them.

A. We give groceries to everyone that come out there after them. The amount was to the size of the family. To each size family there was an amount of groceries to. If there was two in the family, one man and his wife, and a man and one child, they got the same amount of groceries. Two and three children got the same amount and on up like that.

Q. Did you work at issuing the groceries?

A. Yes, sir.

Q. Did you receive any pay for that work?

A. No more than the man that didn't work, the amount of groceries that my family got.

Q. Did you get any more than other families?

A. No, sir.

Q. How about people that couldn't get down to where the groceries were?

A. I carried several people groceries that wasn't able to get there. Gulley and Slaton over at Moulton. They were both sick. I carried it there two or three different times until they were able to come.

Q. Were you ever required to pay dues into the organization?

A. No, sir.

Q. You were not?

A. No, sir.

Q. Where are you working now?

A. Cleveland, Mississippi.

Q. What kind of job is that?

A. Boilermaker.

Q. Still maintaining your home here?

A. Yes, sir.

Q. Your wife still here?

A. Yes, sir.

Cross examination.

By Mr. Wilkinson:

Q. Mr. Wallace, you live out here on the new road where it goes to Moulton?

A. Yes, sir.

Q. How long did you work issuing groceries for the union?

A. About three months.

Q. About three months?

A. Yes, sir.

[fol. 408] Q. You were furnished your groceries along with the other men?

A. Yes, sir.

Q. Did they pay any other expenses for you?

A. No, sir.

Q. Pay your rent, insurance, anything of that kind?

A. A little insurance one time.

Q. A little insurance?

A. Two months' insurance.

Q. Anything else paid for you?

A. They bought some books for one of the children.

Q. They bought some books for one of your children?

A. Yes, sir.

Q. So your total compensation consisted of groceries, insurance and school books for the children?

A. Yes, sir.

Q. The groceries were issued to men walking the picket line, was it not?

A. There was some that didn't walk that got groceries.

Q. That were disabled?

A. Some gave excuses for not walking and they got groceries.

Q. They were excused for satisfactory reasons? Unless

they were excused or walked the picket line, they didn't get the groceries?

A. That's right.

Q. Did you walk the picket line yourself at all?

A. A few times, not much.

Q. What orders did you have with reference to admitting hourly men that reported to the plant?

A. They said at the meeting they asked Oakes did he need some of the men to standby to shut the plant down and he said he had capable salaried men to shut the plant down and he would not need hourly rated men.

Q. They gave you no instruction at all about the hourly men?

A. No, sir.

ETHER S. BROWN, next witness for the defendants, being first duly sworn, testified:

Direct examination.

By Mr. Adair:

Q. Your name Ether S. Brown?

A. Yes, sir.

[fol. 409] Q. Where do you live, Mr. Brown?

A. East of Falkville.

Q. Falkville, Route #1?

A. Yes, sir.

Q. What kind of work are you doing now?

A. Driving a truck.

Q. How long have you lived out there?

A. All my life.

Q. Were you working at the tubing plant at the time of the strike, July, 1951?

A. Yes, sir.

Q. What shift were you on?

A. First shift.

Q. First shift?

A. First shift.

Q. What was the nature of your work; what kind of work did you do?

A. Operating a draw bench.

Court: You live east of Falkville?

Witness: Yes, sir.

Q. Say you were on the first shift?

A. Yes, sir.

Q. That would be from eight in the morning until four in the afternoon?

A. Yes, sir.

Q. Did you work that same shift on the 17th, day before the strike?

A. Yes, sir.

Q. Did you receive any instructions from your foreman on that shift on the 17th about whether or not the plant would be open or closed?

A. By my leaderman.

Q. Who?

A. By my leaderman.

Q. Who is he?

A. Farrell Shipp.

Q. What did he tell you?

A. It was around two o'clock in the afternoon and he told me he just talked to Babis a few minutes ago.

Mr. Harris: We object to any conversation between this witness and the leaderman, Farrell Shipp. It is not shown that Farrell Shipp had any authority to make a statement whether the plant was going to operate or not.

[fol. 410] Court: Was he a superior in the plant over you?

Witness: Yes, sir.

Court: He was employed by the copper plant?

Witness: Yes, sir.

Court: Overruled.

Mr. Harris: Mr. Shipp was an hourly paid employee.

Court: (To Witness) Just like you?

Witness: Yes, sir.

Mr. Adair: Might I point out the fact their witness, Babis, was put on the stand and testified that Shipp did have charge of a group of men, had so many men working under him.

Court: I've already ruled.

Mr. Harris: Except. We renew our objection.

Court: Objection overruled.

Mr. Harris: Reserve an exception.

A. He said he just talked to Babis a few minutes ago and he said "if they strike on our shift and they start off, we are all going out. We won't leave anyone in here. We're locking the gates behind us."

Q. That's what Shipp said to you?

A. Yes, sir.

Q. Were you out at the picket line on the morning of the 18th, the first morning the picket line was there?

A. I got there a few minutes before eight.

Q. Did you at that time know Mr. Russell, plaintiff in this case?

A. Yes, sir.

Q. Did you see him there?

A. Yes, sitting in the car.

Q. You say in the car—where was the car?

A. Sitting in the middle of the street.

Q. Whereabouts in relation to the picket line?

A. The best I recall, right close to the road that turns out to the flour mill.

Q. Did you see anybody around his car?

A. Seen Mr. Hovis, Howard Hovis.

Q. What was Mr. Hovis doing?

A. He was, I suppose, talking to him. I couldn't understand what was being said.

Q. How far away were you?

A. Eight or ten feet, walking along down the side.

[fol. 411] Q. You were in eight or ten feet and couldn't hear what was said?

A. No, sir.

Q. Were they talking in loud voices?

A. No, sir.

Q. Were they cursing each other?

A. I couldn't tell what they were saying.

Q. You didn't hear any oaths?

A. No, sir.

Q. Did you hear any outcry from in the crowd, anybody cry out anything?

A. No, sir.

- Q. How long did you stay out there on that occasion?
A. I went on down and went to walking the picket line.
Q. You picketed some?
A. Yes, sir.
Q. Did you picket some after that morning of the 18th?
A. Yes, sir.
Q. Were there less pickets actually walking after the morning of the 18th, after the strike got under way and you got the pickets organized and scheduled, or were more?
A. Less used.
Q. You had a regular rest period between picketing after the schedule was set up?
A. Yes, sir.

Cross examination.

By Mr. Wilkinson:

- Q. If it was suspected any number of men would attempt to enter the plant, the picket line was increased?
A. The morning they went into work?
Q. Whenever you figured there would be a number of men attempting to get in the plant, you added to the number of pickets?
A. I wasn't there when it was expected they would go in.
Q. You wasn't there on the 22nd?
A. Yes.
Q. What time did you get there the 22nd?
A. Close to eight o'clock.
Q. Close to eight o'clock?
A. Yes, sir.
Q. Had the convoy with the employees reached there [412] when you got there on the morning of the 22nd at eight o'clock?
A. I don't recall that.
Q. How many cars were in the convoy?
A. I don't know.
Q. Did you see the convoy that morning?
A. Yes, sir.
Q. Bring in a large number of men there?

A. Yes, sir.

Q. What would be your estimation of the number of cars in that convoy?

A. I would have—I really don't know.

Q. Your best judgment?

A. I imagine, in my best judgment, about 25 or 30.

Q. Twenty-five or thirty?

A. Yes, sir.

Q. You know who was in the first car?

A. No, sir.

Q. Second car?

A. No, sir.

Q. Third car?

A. No, sir.

Q. Fourth car?

A. No, sir.

Q. Did you see Paul Russell that morning?

A. I don't recall.

Q. Where were you when the convoy drove up?

A. Standing along side of the road.

Q. How close to the picket line?

A. Way back from the picket line.

Q. About how far?

A. I guess twenty-five or thirty yards.

Q. Some of the Highway Patrol on duty out there?

A. Yes, sir.

Q. You saw them open up the picket line and motion the convoy through?

A. I didn't notice. I was watching the cars come on down.

Q. Did you see Mr. Russell in one of those cars?

A. No, I didn't notice him.

Q. See anybody you recognized?

A. I don't know. Yes.

[fol. 413] Q. Yes?

A. There were two or three I knew well.

Q. You belong to the union at that time?

A. Yes, sir.

Q. Did you walk the picket line frequently?

A. Yes, sir.

Q. You got groceries for walking?

- A. I got groceries.
Q. Did they pay any other expenses for you?
A. No, sir.
Q. House rent, insurance, school books?
A. No, sir.
Q. Groceries the only thing you got?
A. Yes, sir.

HOWARD L. GOODLETT, next witness for the defendants, being duly sworn, testified:

Direct examination.

By Mr. Adair:

- Q. Your name Howard L. Goodlett?
A. Yes, sir.
Q. Where do you live, Mr. Goodlett?
A. 213 Sixth Avenue Northwest, Decatur, Alabama.
Q. How long have you lived in Decatur?
A. About four years.
Q. You a married man with a family?
A. Yes, sir.
Q. Were you working at the copper plant just before the strike took place in July, 1951?
A. Yes, sir.
Q. What was you job out there, Mr. Goodlett?
A. Machinist.
Q. What shift was you working on?
A. Third.
Q. That would be from twelve midnight to eight in the morning?
A. Yes, sir.
Q. Did you work from twelve midnight, July 18th, until eight o'clock the morning of July 18th?
A. Yes, sir.
[fol. 414] Q. You did work out there?
A. Yes, sir.
Q. Did you receive any instruction as to whether or not you were to continue working from your foreman?
A. No, not to continue working after eight o'clock.

Q. Did your foreman give you any instruction about whether or not the plant was going to operate or not operate during the strike?

A. He asked me if I would help sweep up the shop. The shop was going to be closed for a few days.

Q. What time of the morning did he ask you about helping sweep the shop?

A. I would say between seven and seven-thirty.

Q. On the morning of the 18th?

A. Yes, sir.

Q. You say you were a machinist?

A. Yes, sir.

Q. What was your foreman's name?

A. Austin Crites.

Q. Was it customary for you to sweep the shop?

A. No, sir.

Q. Did he give any particular reason why he wanted you to help sweep on that occasion?

A. Nothing only that the plant was going to be down for a few days.

Q. That the plant was going to be down for a few days?

A. Yes, sir.

Q. Did you help sweep the shop?

A. Yes, sir.

Q. That was about what time?

A. I would say between seven and seven-thirty.

Q. As far as you know, did he ask any other machinists to help sweep up so he could close up?

A. One other helped. I don't know what he asked. Corbett Templeton.

Q. How long did it take you to do that job?

A. Thirty or forty minutes.

Q. Got through by eight o'clock?

A. Yes, sir.

Q. When you got through sweeping up after he told you the plant was going to be closed down, what did you do at eight.

[fol. 415] A. It was time for the shift to end, so we washed up and went out.

Q. Did you take a shower inside the plant?

A. Yes, sir.

Q. When you got on the outside, were you driving your automobile or riding with someone?

A. I was driving.

Q. Your own car?

A. Yes, sir.

Q. Did you manage to get out alright?

A. Yes, sir.

Q. Was there a picket line out there?

A. Yes, sir.

Q. When you got to the picket line, how did you get through?

A. I just drove through.

Q. They opened up?

A. Yes, sir.

Q. You drove through?

A. Yes, sir.

Q. Stop after you drove through?

A. I drove on up the street a ways and stopped.

Q. What did you do then?

A. I came back to the picket line.

Q. How long did you stay down there?

A. About thirty minutes; maybe an hour.

Q. What did you do then?

A. I went home.

Q. Did you do any picketing out there yourself?

A. Yes, sir.

Q. That would be third shift picketing?

A. Yes, sir.

Q. Who was the third shift picket captain?

A. Joe Clark.

Q. Joe Clark?

A. Yes, sir.

Q. Was he an employee like you were?

A. Yes, sir.

Q. After the first few days, he get the schedule worked out where only a few had to be there at a time?

A. Yes, sir.

[fol. 416] Q. You didn't have such a schedule the first few days?

A. No, sir.

Q. Then how frequently did you have to picket?

A. About every other night.

Q. And how many pickets would generally be out there?

A. Three to six.

Q. Three to six?

A. Yes, sir.

Q. Did you ever see any hourly paid employees on that shift that you were picketing, did you ever see any hourly paid employees come to that picket line and ask to go into work?

A. No, sir.

Q. You didn't?

A. No, sir.

Cross examination.

By Mr. Wilkinson:

Q. Who did you first tell about this conversation that you claimed to have with Mr. Crites?

A. I talked to the lawyer.

Q. When?

A. One day last week.

Q. That the first time you reported that conversation to anybody since the conversation occurred?

A. That's right.

Q. The conversation occurred, I believe you said, about 7:30 on the morning of July 18, 1951?

A. Between 7 and 7:30.

Q. Between 7 and 7:30?

A. Yes, sir.

Q. And the first time you have repeated the substance of that conversation to anybody since that time was when, last week, when you talked to the lawyer?

A. Yes, sir.

Q. Tell us, what else happened on July 18, 1951 around 7:30 that you can remember.

A. I was in the machine shop at that time sweeping up; after eight o'clock, I came, washed up, changed clothes and came out.

Q. Where did you go?

A. I stopped at the picket line thirty minutes or an hour.

[fol. 417] Q. Who did you speak to out there?

A. Quite a few fellows.

Q. Who were they?

A. Joe Clark, Willard Bowling, Howard Hovis.

Q. Anybody else?

A. Quite a number of men.

Q. Hear anybody hollering, "Turn him over" when Russell was in his car?

A. No, sir.

Q. Your hearing good?

A. Yes.

Q. Did you hear yelling going on out there?

A. No, sir.

Q. Didn't hear any yelling at all?

A. No, sir.

Q. Couldn't hear what Hovis was saying to Russell?

A. Hovis wasn't saying anything to Russell when I came out.

Q. Was Russell red, mad and talking fast?

A. I didn't notice Russell when I came out.

Q. Where did you go from the picket line?

A. Home.

Q. Go to bed?

A. Yes, sir.

Q. What time did you get up that afternoon?

A. I would say around three or four o'clock.

Q. Go back to the picket line?

A. No.

Q. Where did you go?

A. Up to the Union Hall.

Q. Have a meeting up there that afternoon?

A. No, sir.

Q. What was you doing up at the Union Hall?

A. Just a few guys up there. We sat around talking a while.

Q. Did you do any picket duty out there?

A. Yes, sir.

Q. Get groceries while you were picketing?

A. Yes, sir.

Q. What other expenses did the union pay for you?

A. House rent.

[fol. 418] Q. How much house rent did they pay?

A. \$48.50 a month.

Q. How many months did they pay house rent for you?

A. Three or four months.

Q. What other expenses did they pay?

A. My insurance.

Q. How much did your insurance amount to?

A. About \$15.00 a month.

Q. What else did they pay for you?

A. That's all I can recall.

Q. Your compensation consisted of groceries, house rent and your insurance?

A. Yes, sir.

Q. That's all you got out of it?

A. Yes, sir.

Re-direct examination.

By Mr. Adair:

Q. The lawyer here has been asking about your compensation for picketing. As a matter of fact, was it not true you had an election in the plant and you chose a bargaining agent?

A. Yes, sir.

Q. And is it not true that that bargaining agent was negotiating, trying to improve your wages and working conditions?

A. Yes, sir.

Q. That was the objective of the bargaining and the strike, was it not?

A. Yes, sir.

Re-cross examination.

By Mr. Wilkinson:

Q. One objective was to get union security, was it not?

A. Yes, sir.

Q. You were one of the men carrying a banner that said, "Striking for Union Security"?

A. Yes, sir.

Q. What is union security?

A. That is to my opinion the right to have a union.

Q. It is not only a right to have a union but—

Mr. Adair: I object to the attorney testifying. He can ask the question, but I object to his testifying.

[fol. 419] Mr. Wilkinson: I am asking this witness what he knows about it.

Mr. Adair: No you're not.

Court: Let the question be asked and the objection made and I will pass on it.

Q. I will ask you if it isn't a fact by union security you mean that you want to organize a contract with the company containing the provision that a man had to belong to the union as long as he is working there and the company deducts from his pay the dues and pays them over?

A. Yes, sir, we asked that.

Q. That was one of the demands?

A. Yes, sir.

Q. That's what you meant by that sign, "Striking for Union Security"?

A. Yes, sir.

2nd Re-direct examination.

By Mr. Adair:

Q. The lawyer for Mr. Russell here has been talking about some signs that say "On Strike for Union Security," and he introduced into the record some pictures, Exhibit "4 and 5" and they show a total of six signs that can be read. (Indicating) You can see the wording on this, this, this, this, that one and part of that one.

A. Yes, sir.

Q. Will you look at those six signs and see if there is a single one of them that says what counsel said that it said, "On Strike for Union Security"? And tell the jury.

Mr. Harris: We object; that invades the province of the jury.

Mr. Adair: Counsel is misstating what are on the pictures.

Court: The pictures will show. The jury will have them.

Q. Mr. Goodlett, I will ask you if on one of the pictures I just showed you it says, "On Strike: The Union Wants Arbitration and Company Says 'No.'?"

Mr. Harris: *Me* object to that.

Court: I will let him ask if it is on there.

A. Yes, sir.

Q. I will ask you if one sign says "On Strike Against Company Interference in Choosing Union Representatives"?

A. Yes, sir.

Q. Do you see any picture there that says "On Strike for Union Security"?

A. No, sir.

[fol. 420] THOMAS J. STARLING, next witness for the defendants, being duly sworn, testified:

Direct examination.

By Mr. Adair:

Q. Your name is Thomas J. Starling?

A. Yes, sir, that's right.

Q. Where do you live, Mr. Starling?

A. Avondale Estates, Georgia.

Q. In and around Atlanta?

A. Near Atlanta.

Q. Mr. Starling, have you held an office in the U.A.W. union?

A. Yes, sir, I have.

Q. What office?

A. Executive Board Member and Director of Region 8.

Q. Did you hold such office during the period of time that the copper plant was being organized and during the strike?

A. I did.

Q. Are you a Regional Director at this time?

A. No, I am not.

Q. Did you get—how long has it been since you were Regional Director?

- A. I was defeated for that office on March 25th.
- Q. At a Union Convention where they had votes?
- A. Yes, it was.
- Q. What is your connection with the union now?
- A. I am International Representative of the Union.
- Q. Mr. Starling, what was done about trying to organize the employees of the tubing plant? Do you remember who first got in touch with the UAW about organizing the plant?

Mr. Harris: We object; immaterial to this case.

Court: What is the purpose of that.

Mr. Adair: I wanted to give the back ground to show the union did not come in seeking the people. They contacted the union wanting representation.

Court: You can ask if it was solicited.

Q. Were you solicited or contacted?

Mr. Harris: We object to that because it is immaterial and irrelevant.

Court: Overruled.

[Vol. 421] Mr. Harris: Reserve an exception.

A. Yes, we were.

Q. Was a man sent in to talk to the employees?

A. Yes, sir.

Q. Following that, did a majority of the employees in the plant authorize the union to, or designate the union as its representative?

A. Yes, they did.

Q. Was an election held?

A. Yes.

Q. In the election that was held, of the production and maintenance people in early 1951, was that under government supervision?

A. Yes, it was.

Q. Do you know how that election came out?

A. I don't recall the exact vote. I know that our union got a majority of the total valid votes cast in that election and was certified by the National Labor Relations Board as the exclusive bargaining agent for the production and maintenance workers in the plant. I don't recall the exact vote.

Q. You spoke of the union being certified. Will you tell the jury and the court what do you mean by that?

A. When an election is conducted under the National Labor Relations Act and a majority of the employees vote for a union to represent them, the National Labor Relations Board then certifies that union as the exclusive collective bargaining agent for all employees included in that unit.

Q. Is that certificate delivered to you in writing?

A. Yes, it was.

Q. Following receiving that certificate from the government, what efforts were made, if any, to secure an agreement with the company?

A. A meeting was called of the employees, members of the union at the Wolverine plant that worked in that plant and the contract demands was discussed with the membership. Demands were drawn up and accepted by the membership. The membership elected a negotiating committee of workers and members of the union that were working in the plant, and this negotiating committee, workers in the plant, along with International Representative, then met with management in the negotiations in an attempt to negotiate an agreement between the union and management.

Q. Do you know whether or not such meetings were held?

A. Yes, there were several meetings held between the time that the union was certified and July 18, 1951.

[fol. 422] Q. How did the meetings come out?

A. Well, we were unsuccessful in getting an agreement with management which was acceptable to the workers in the plant. We had went to the extent that we got the services of the United States Conciliation Service and later in the dispute, the State Department of Labor entered into the dispute.

Q. They sit in some negotiations between the company and the union?

A. Yes, they did.

Q. Do you know how many points of dispute there were between the parties still unsettled on the 17th of July?

A. There were several points in dispute. The union considered the most serious—

Mr. Wilkinson: We object to what the union considered the most serious; calls for a conclusion of the witness, invades the province of the jury; incompetent, immaterial.

Court: Sustained.

Q. Just tell us what point, what main points were still in dispute.

A. Wages, check-off, I believe some seniority provision that had not been settled, and arbitration.

Q. What is this arbitration?

A. Arbitration is the method of settling disputes that arise under the terms of an agreement between the employer and the representative of the employees. There is different methods of settling disputes. Naturally, arbitration being one of them, under an agreement where you do not have arbitration, unless you can settle your dispute between the employees and management through negotiations, direct negotiations, if you do not have an arbitration clause in your agreement, then the only method of settling that dispute is through strike action. In all of our agreements, we tried to write in the arbitration provision.

Mr. Wilkinson: We object to what they do in all agreements.

Q. What were you doing in this agreement?

A. In this agreement, we tried to write the provision into the agreement, which provision provides that after a dispute has come through certain stages of negotiations and you have met with the top management in the plant, along with some of the top union officials, and you have been unable to resolve the dispute through direct negotiation, then the dispute is taken to an impartial arbitrator. Usually the arbitrator is named by some individual that the parties agree to name the arbitrator or he is selected by the American Arbitration Association or by the United States Conciliation Service. It's done in different methods. We were of the opinion—

[fol. 423] Mr. Wilkinson: We object to the opinion.

A. We were attempting to write into the agreement such a provision so that all disputes could be settled without any interference with the production in the plant or loss of pay to the employees of the plant.

Q. What position did the company take on the arbitration question?

A. The company took the position that they would not agree to arbitration under any circumstances.

Q. Is that one of the unresolved issues when the union meeting was held on the 17th?

A. Yes.

Q. Prior to the 17th, had you been in Decatur at all; if so, how frequently had you been here to advise and consult with the negotiating committee?

A. I had been in Decatur, I believe, on three different occasions, met with the people here and discussed the negotiations and consulted with them on their negotiations.

Q. These three occasions prior to the 17th of July?

A. Yes.

Q. While you were here, did you stay here for a long period of time?

A. I would usually come in probably one day and stay over the next day and leave the third day; usually a couple of nights here and probably one full day.

Q. Where you in Decatur on the 17th day of July, 1951?

A. Yes, I was.

Q. Did you attend the one o'clock meeting of the second shift?

A. Yes, I did.

Q. Where was that meeting held?

A. On Second Avenue in a hall that we had. I don't recall the address but it was on Second Avenue. It is a hall upstairs the UAW had.

Q. How many people were in attendance at that meeting in your estimation?

A. Between 100 and 150 people at the meeting.

Q. That was the first meeting?

A. Yes, sir.

Q. What took place at the meeting?

A. At that meeting, the negotiating committee made a report to the membership as to the status of the negotiations; as to what management had agreed to and what management had refused to agree to that they were asking. After the committee made the report, the motion was made [fol. 424] in this meeting to strike the plant at 8 o'clock the following morning. That motion was seconded and after discussion that motion was passed. After the motion was

passed, I spoke at the meeting and I told the people present at that meeting that this question would have to be taken up at a meeting that was to be held at 4:30 that afternoon for the first and third shift that worked in the plant, and that they would be notified as to the vote in that meeting. I told them further that if a strike was called, if they went out on strike the next morning, that it was the advice of their union and my advice that they conduct themselves as gentlemen on the picket line around that plant and we could not afford and could not permit any rough stuff or violence in and around that plant during the strike. I explained to them that there were people working at the plant that had not as of yet seen fit to join their union and they should try to persuade those people to support them in their just demands they were making on management in this dispute. I explained to them that if they were successful in the strike, they would have to have the support of those people along with the support of the community; that the support of the community was very important in any situation such as that and for that reason that they should conduct themselves in a manner that they would not get the ill-will of anyone, and I pointed out to them that if the strike was called, that there absolutely would be no one permitted at all on or near that picket line during the conduct of that strike under the influence of alcohol. That that would create trouble if any of them come around a dispute such as that drinking, and I wanted them to know that if there were any going to do any drinking, they would have to do it away from the picket line and away from the plant.

Q. After that meeting was over, was there a meeting that followed later in the afternoon?

A. Yes, sir, there was another meeting of the first and third shift called for 4:30 that afternoon. But after the second shift meeting which was held at one o'clock, after that meeting was over with, I met with the negotiating committee along with Duncan, International Representative, Assistant Regional Director at that time. I told them that I thought they should contact the company and ask for a meeting to discuss with them the procedure to be followed in case the strike was called the next morning, because after the first meeting it was pretty obvious to me then from the

tenor of that meeting that probably the next meeting was going to follow likewise. I pointed out to them that this was a type of plant that had equipment in there that could be damaged if the proper care was not taken of that equipment in the way of furnaces and things of that nature, and [fol. 425] that to damage the property of the company would not benefit anyone; that eventually the strike was going to be over with; people were going to want to go back to work in the plant and unless the property of the company was protected, it would take some time after the strike was over with before they could put the plant into operation; that they should arrange a meeting of the company to offer the full cooperation of the union members in protection of the property, in unloading the furnaces and taking care of any other equipment before the plant was shut down and also protection of the plant during the strike. And so they called the company and arranged for the meeting. The committee, along with Duncan, went out and met with the company and discussed these problems with them. Then we come into the 4:30 meeting. The committee made report as they did at the one o'clock meeting on the status of the negotiations. Then after they made that report and they also made report on the meeting with management. They reported to this meeting that they had met with management—

Mr. Wilkinson: We object to that report; hearsay, incompetent and irrelevant.

Court: Overruled:

Mr. Wilkinson: Reserve an exception.

A. They reported to this meeting at 4:30 of the membership they had met with management and discussed these problems and had offered the full cooperation of the union membership in the protection of the company's property in shutting down of the plant and also the protection of the company property during the strike and they said that the company stated to them that they had sufficient, ample salaried employees to take care of that without the help of the hourly rated employees. And that the company stated to them that if the strike was called, that the plant would be closed to all hourly rated employees, but they would want the salaried employees in the plant during this strike and

the union reported to that meeting they had agreed that they would not interfere with the salaried employees leaving or entering the plant during the conduct of the strike, and that they would so instruct the pickets when and if the strike was called.

Q. After that report, Mr. Starling, to the meeting, did you make a talk to that meeting, too, about the manner the strike should be conducted?

A. I did. After a motion was made that they go out on strike the next morning at 8 o'clock, which was seconded, and after discussion, the motion was carried. I talked to the second meeting along the same line that I talked to the first meeting. I didn't talk at either meeting until after the [fol. 426] vote was taken.

Q. You mean by that, you did not say anything to them until after the vote was taken?

A. I didn't make a statement in either meeting until after the meeting had voted to go on strike. I cautioned the second meeting in the same manner that I had the first meeting, and in addition to that, I stated to the second meeting (of course it had been stated to the second meeting previous the results of the first meeting which was the second shift meeting), I urged them all to show up on the picket line the next morning at 8 o'clock, to conduct themselves as gentlemen, and that after the picket captains were set up, shifts would be set up and they would be assigned a shift so they would not have to picket all the time. They would have a regular shift to picket on. That would all be straightened out and would all be taken care of after they reported to the picket line the next morning.

Q. Do I understand your testimony that everybody was to report in the vicinity the next morning and that as soon as schedules had been worked out, that they would be told when to picket and it would be unnecessary for them to be there except on those occasions?

A. That is correct.

Q. Is that the reason for the number of pickets being reduced after that occasion?

Mr. Wilkinson: We object to the "reason".

Court: Sustained.

Q. You know whether or not there were fewer pickets out after the schedules were arranged than before?

A. Yes; they were.

Q. People were assigned to certain hours to picket?

A. And in addition to that, some people, for various reasons, were excused from picketing and we set up what we called a skeleton picket line; we didn't require all the people to picket.

Q. Did you go out to the picket line the next morning?

A. Yes, I did.

Q. Did you issue any instructions out there?

A. Yes. I got out there to the picket line I think the morning of the 18th somewhere around six o'clock, and the first thing we did, we set up a small picket line at the entrance to the plant. The other people were instructed to keep the road leading into the plant cleared. Lot of people were coming out and a lot of pickets coming out, trying to get their cars parked, to keep them off the highway and keep the road [fol. 427] clear so that the salaried employees could get through to the entrance of the plant without any trouble. And the pickets were instructed to stay off of the road with the exception of those assigned to picket duty. Pickets were instructed not to congregate or stand on the picket line. They were to keep moving and keep walking on the picket line.

Q. Did you see Mr. Frank Oakes come to the picket line on that morning?

A. Yes, sir, I did.

Q. Do you know about what time he came there?

A. The best I recall it was somewhere between, around 7:30 and 8. I don't know the exact time.

Q. What occurred when Oakes got there?

A. He stopped before he got down to the picket line and called off Mr. Duncan. Mr. Duncan and maybe one or two other fellows, somebody with him—I don't recall who it was—went over to his car and talked to Oakes. I Didn't go to the car myself, and Mr. Duncan came back, and he said Mr. Oakes—

Mr. Wilkinson: We object to what Duncan said.

Court: Sustained.

Q. What did you do as a result of the conversation with Oakes?

Mr. Harris: We object; invades the province of the jury; calls for a conclusion.

Court: It calls for a conclusion.

Q. What did you do immediately following that conversation?

A. Immediately following that conversation, I told the pickets on the picket line they could identify salaried employees by a badge number which would be between two and four thousand and also by an identification card issued by the company.

Q. Were you there when an automobile came up to the picket line and stopped and stood there for a long time?

A. Yes, I was.

Q. Did you have any conversation with the occupant of that car?

A. Yes, I did. There was a car drove up, I would say, within about 25 or 30 feet of the picket line and stopped. Some of the fellows that were out there went up to the car and talked to the individual in the car. Some of the fellows on the side told me that the driver of the car was a man by the name of Paul Russell, and that he was an electrician in the plant, hourly rated employee. He sat in the car with the fellow talking to him for a while and [fol. 428] then he pulled his car up some 10 or 15 feet and stopped again. They were still fellows around the car talking to him, and after some length of time, I don't know just how long it was, I was standing on the side of the road opposite the flour mill. I walked around the car and walked up to the driver seated in the car and told the driver of the car that I was the Regional Director for the UAW (CIO) in this Region, and that the union had met with the company the day before and that the company had told the union that if and when the strike was called, the plant would be closed to all hourly rated employees and the union had agreed that they would open the picket line and let any salaried employees enter and leave the plant that wanted to; and that I thought he, being a worker in that plant, that he should support the union's just demands in this dispute, and that I hoped he would do that. He stated

to me he wasn't going through the picket line. I pointed out to him that any demands that the union might win would help everybody in the plant. After this discussion, I walked on back across the road, and there were still such fellows around the car talking to him. I called some of them over and told them they ought not discuss it with him any further. We didn't want any trouble out there and they should walk off and leave him, just ignore him; if he wanted to sit, just let him sit; they should not talk any further. Wasn't but a little bit before everybody left the car. No one was around it. He sat for a while after then. I don't know how long. It wasn't too long until there was no one talking to him; he didn't sit there but for a little while, then he turned his car around and left.

Q. The issue has been raised about whether or not the union paid people to do things. Paid some of these defendants. As Regional Director can you state whether or not any of these defendants ever received any salary or other compensation from the union?

A. No workers in that plant ever received any salary from our union. The only thing they received on strike was their relief they got as furnished by the union in the way of groceries, and we furnished some meals for them on the picket line or maybe paid some bills that had been due; things like that. No money was paid directly to any employees, the union members in that plant.

Q. Was there any compensation for picketing, or was that relief?

Mr. Wilkinson: We object to that.

Court: That's sustained.

Q. Will you explain to us how this plan of aid to the employees operated?

[fol. 429] A. In our union, we do not follow a policy of giving an individual any particular amount of relief while on strike. If members of our union are on a strike, a legal strike, and they need relief, an application is made to the International Union and their relief is given in accordance to their needs. For instance, if there is a worker on strike, is financially able to take care of his own problems, he is not given relief by our union. Relief is given on the need, actual need of that striker and his family. For instance, we

give groceries where a striker is depending completely on the union for his meat and bread, I give those groceries based on the number of people in his family, the number of people he has to feed. If he can partially take care of his own self, he isn't given as much relief as the fellow that has to depend totally on the welfare of the union.

Q. Mr. Starling, do you know whether or not any dues have been charged any employees out here by the union?

A. To my knowledge, no dues have been paid.

Q. Were you on the picket line on other occasions other than the morning of the strike?

A. Yes, I was back in here one time later during the strike. I don't recall the date that I was in here. I was in here and I was out on the picket line I know one afternoon and I was at the picket line that night when the midnight shift of the pickets changed; and I was out to the building where they had their groceries stored where they were issuing groceries to the strikers and their families.

Q. Do I understand you were only back one occasion during the strike after the 18th?

A. That is correct.

(Court adjourned until (9:00 A.M.) June 9, 1953.)

Q. You were on the stand yesterday, were you not?

A. Yes, sir, I was.

Q. Mr. Starling, there has been mentioned here about whether or not there had to be a contract in existence on behalf of the employees before a local union was activated.

A. It is the general policy of our union—

Mr. Wilkinson: We object to the general policy of the union, inter alios acta; incompetent, irrelevant and immaterial.

Court: Overruled.

Mr. Wilkinson: We except.

A. It is the general policy of our union in organizing a [fol. 430] plant into our union that we do not establish a local union until such time as the agreement between the company and the union is made; then the officers of the local union are elected and the local is set up.

Q. Was that the case here?

A. That was the case here at Wolverine Company.

Q. No contract was ever reached, was there?

A. There was not.

Q. There was no local union ever activated?

A. That's right.

Q. Mr. Starling, you have testified about seeing a man sitting in a car on the picket line who has been identified as the plaintiff here. Mr. Russell has testified that when he stopped there in the vicinity of the picket line—

Mr. Harris: We object to the attorney repeating the testimony of another witness in this case to this particular witness.

Court: Sustained.

Q. Mr. Starling, I will ask you whether or not when Mr. Russell, the plaintiff, stopped at the picket line, whether or not you were the first person to go up to his car?

A. I was not.

Q. I will ask you whether or not you walked up to his car and asked him the question, "Hourly or salaried"?

A. I did not.

Q. I will ask you whether or not the plaintiff said to you at any time when you were at his car, "What difference does it make"?

A. He did not.

Q. I will ask you whether or not while you were at the plaintiff's car you said to him, "If you are salaried you can go on in; if you are hourly, this is as far as you can go."?

A. I did not make that statement.

Q. I will ask you whether or not you stated to the plaintiff that he was blocking traffic?

A. I did not.

Q. I will ask you whether or not you said to the plaintiff "you should have more respect for your fellowman than to try to break through the picket line"?

A. I did not. I stated to Mr. Russell that I thought he [fol. 431] should support the just demands being made by the union.

Q. Did you make any remarks about him breaking through the picket line?

A. I did not.

Q. Did you tell him that he would have to turn around?

A. I did not.

Q. While you were talking to Russell, did you motion for the picket line to part to let a bus in?

A. I did not.

Q. Do you remember any bus in the vicinity while you were talking to Mr. Russell?

A. I don't recall any.

Q. But you are sure, are you, that you didn't motion any bus in?

A. I did not motion any bus in at all.

Q. As a matter of fact, what were you doing out there on that morning?

A. I was out there observing the picket line and to contribute what I could to see that there was no disturbance, advising the pickets of their rights under a legal strike, and you might say general supervision, and I was there too to assist them in setting up the picket line and working out, helping them to work out the shifts, times that the different people would picket. If you have ever had any experience in a strike, it is quite a job.

Mr. Wilkinson: We move to exclude that.

Court: Don't go into that. Sustained.

Q. Tell us just what the job of setting up the picket line consisted of, out there on that morning.

A. Setting up the picket line consisted of getting the names of all the people, where they lived, and asking for volunteers on the shifts, hours that they would prefer to picket, and then determining the location of each volunteer on the shift for picketing.

Q. What do you mean the location?

A. I mean the location of where they live, the community they live in to try to work out a pool of rides so the pickets can ride together to and from the picket line, and then after you get as many volunteers for each shift, then you have to discuss with the rest of the people who have not volunteered their particular problem, if they can picket and if so what shift they can picket on. If they have an excuse or reason for not being able to picket, what those reasons

are and excuse them from picket duty maybe for a later date, or some can picket on certain dates and some can't [fol. 432] picket for some particular reason, family problems they have, so it is quite a job I mean working all this out. It usually takes about a week in a strike of the size that we had here before you can work out all these problems and get all the pickets as to the time they will picket and the shift and the pooling of rides and all those things. Usually takes about a week.

Q. What action was taken at the meeting on the 17th with respect to the manner in which the picketing was to be organized?

A. I told the people at the meeting on the 17th at the second meeting, which was at 4:30 in which they voted to go out on strike, the first meeting voted to go out on strike the next morning at 8 o'clock. I told all of the people they should show up at the plant the next morning and explained to them how we would have to work this question of picketing out and the shifts and the picket captains would have to be elected to be responsible for certain days, and a strike committee set up for over-all supervision, and also a relief committee set up to take care of the relief problem, and a committee for serving their lunches while they were serving on the picket line, and all of those things would have to be worked out. All of them should show up and as they were set up and the shifts were assigned them they would be relieved until their regular time to picket or serve on a committee, as the case might be.

Q. What is the relief committee you spoke of?

A. That is the committee that if any of the fellows have a problem of immediate relief, they report to this committee and tell them what the problem is. The committee makes an investigation of the relief sought by the individual and then to make a determination as to the relief needed by the individual and that will be given from the strike fund to the individual.

Q. Mr. Starling, with regard to the plaintiff, Mr. Russell, do you know how long he had been there when you went up and spoke to him?

A. I don't know how long he had been there. He had been there for a considerable length of time. He was there a

much shorter length of time after I talked to him than he was before I talked, but the exact time I don't know.

Q. After you talked to him, did he leave shortly after that?

A. Just after I talked to him, there was some fellows still talking to him, and I talked to them and told them they should walk away and not talk to him any more, so it wasn't but a few minutes before they all left his car and no one was talking to him, no one around his car at all, and he didn't sit there very long before he left.

[fol. 433] Cross examination.

By Mr. Wilkinson:

Q. Mr. Starling, you have had considerable experience in the labor movement, have you not?

A. Yes, sir.

Q. What state are you a native of?

A. Georgia.

Q. Born in Georgia?

A. Yes, sir.

Q. Raised in Georgia?

A. Yes, sir.

Q. When did you become connected with the labor movement in Georgia?

A. I became a member of this union in 1936.

Q. You a member of another organization before you joined this one?

A. I was at one time, the International Brotherhood of Electrical Workers, AFL.

Q. When the CIO organized, you became connected with this International UAW?

A. Yes, I went to work in the Fisher Body Plant division in Atlanta in 1928 and I joined the union in 1936.

Q. What organization did you belong to from 1928 to 1936?

A. You mean labor organization?

Q. Yes, sir.

A. I didn't belong to any.

Q. You were an International Board Member at the time this strike took place?

A. Yes, sir.

Q. You were also Regional Director of Region 8?

A. That's right.

Q. As an International Board Member, how much salary were you paid per year?

A. At the time that this strike was in progress here—

Mr. Adair: I am going to interpose an objection. I don't see the materiality of what the man's salary is. We object on the ground it is immaterial to the issue.

Court: It might have some weight on his credibility.

Overruled.

Mr. Adair: We except.

A. My salary was \$7,750.00 a year.

[fol. 434] Q. That was an International Board member?

A. Correct.

Q. You draw a salary as Regional Director?

A. No, sir. All members of the International Executive Board, with exception to the Vice President, the Secretary-Treasurer and the President, are also a Director of the Region from which they are elected.

Q. So as Regional Director you had no compensation in addition to the \$7,750.00 paid you per year as a member of the International Board?

A. That is correct. No salary.

Q. In addition to being paid \$7,750.00 per annum as a member of the International Board, you were entitled to \$15.00 a day expenses when away from home on union business, were you not?

A. Technically, under the Constitution I was, but I did not draw that. The policy established by the Board—

Q. I didn't ask you about the policy.

A. I didn't draw \$15.00 a day.

Q. You were entitled to that under the Constitution?

Mr. Adair: We object; that calls for a conclusion.

Court: Sustained.

Mr. Wilkinson: We offer to show that he was.

Court: He's already said he was.

Q. Mr. Starling, in addition to the pay provided you as International Representative, the Constitution of your labor

organization also provided that each member of the organization performing services for the organization under your direction or the direction of your Board, that each should be entitled to an amount for time lost according to his earning capacity and not less than \$10.00 a day, didn't it?

A. If he was employed by the International Union.

Q. You were an International Union Representative on the ground here?

A. That is correct.

Q. So that if you directed any member of the organization to perform any service for the organization here, the one performing that service was entitled to \$10.00 a day or an amount equal to his lost time if it was greater than \$10.00?

A. That is not a correct statement.

Q. Let's see if I am quoting it correctly.

Mr. Adair: I would like to make an objection. To this point, the plaintiff himself has introduced in his own evi-[fol. 435] dence the International Constitution and vouches for it. It speaks for itself; it is the best evidence. This witness can testify as to what was done: Whether or not he did pay anybody or authorize it. It is not legitimate for counsel to argue about the Constitution that he himself vouches for and introduced. That is in evidence, the Constitution.

Court: Of course, he can test the recollection of this man, his intelligence or anything else that he wishes to on cross examination; so for that reason he could inquire as to whether or not he knew that fact for the purpose of going to the jury as to whether or not this man understands what he is talking about, anything of that kind.

Mr. Adair: I withdraw the objection.

Q. I will ask you if under Section 5 of the Constitution of this International Union that a member performing service for the International under your direction would be entitled to an amount for time lost equal to his earning capacity, except that this remuneration shall not be less than \$10.00 per day?

A. Section 5 of what article?

Q. Article 2 on page 26.

A. I would like to read the section: "The compensation of any member of the International Union, performing service under direction of the International Executive Board shall be an amount for the time lost equal to his earning capacity, except that this remuneration shall be not less than \$10.00 per day, or in case of International Representatives their weekly salary."

Q. That is Section 5 of your Constitution?

A. That is right.

Q. You represented the International Union here on the ground?

A. That is correct.

Q. And you represented the International Executive Board here, your Board was represented here in Decatur?

A. I was a member of the International Executive Board.

Q. Acting for them here?

A. You don't, as an individual, act for our International Executive Board, unless the Executive Board has specifically given you that authority.

Q. The Board delegated you the authority of this strike?

A. That is right.

Q. You represented the Board to that extent?

[fol. 436] A. That is correct.

Q. Who approved the application for funds that was made to the International Union for use in this area in connection with this strike?

A. The application for funds was approved by the four top officials of our International Union.

Q. It had to be approved by you before it reached them?

A. I make the recommendation to the Secretary.

Q. You made the recommendation that a certain amount of funds be allotted for use in this strike?

A. Correct.

Q. That recommendation was acted upon and approved and the funds furnished by the authority of the union?

A. It is acted upon by the higher authority of the union and were approved as recommended or altered.

Q. Approved in this case?

A. Not in all cases, no.

Q. In this particular case it was approved?

A. Not every recommendation that I made in connection with it.

Q. What recommendation did you make in connection with the funds that was not approved?

A. I recommended that the funds be extended over a longer period of time than they were.

Q. Your recommendation was that they not terminate their financial assistance on September 24th; you wanted to continue beyond that period?

A. Correct.

Q. But you did recommend and they did approve the amount paid up until the time it was terminated?

A. I don't recall whether there was any change made on any recommendation on any specific allotment or not.

Q. Did you make a recommendation for each week, or month, or how was it made?

A. No, you make recommendations in the beginning.

Q. How did you in this case?

A. I am speaking of this specific case. I made recommendations in the beginning of the strike.

Q. How much did you ask to be allotted?

A. I don't recall.

Q. In your best judgment?

[fol. 437] A. I could look those figures up, but now it would simply be a guess.

Q. Give us your best guess if you can't do anything but guess.

A. I could furnish that to the court if desirable.

Q. Do you have any recollection of any amount you recommended to be allotted for use in this area in connection with this strike?

A. I know the approximate figure that was used during the strike.

Q. What was the approximate figure?

A. It was somewhere in the neighborhood of \$68,000.00.

Q. \$68,000.00, and no part of that \$68,000.00 would have been allotted or used here without your approval?

A. That is correct. I would assume that would be correct.

Q. That was the procedure? They didn't send money until the Regional Director recommended that?

A. That is correct. In this case they didn't.

Q. Your organization, this International Union—(when I say "your organization, you may understand I refer to the United Automobile Workers), and for the purpose of brevity, I refer to that as "your organization"—your organization at that time was endeavoring to get a contract with the copper plant?

A. That is correct.

Q. Your organization regarded that as a very valuable contract; didn't it?

A. We value all of our contracts.

Q. You valued that one?

A. We do all.

Q. You valued that to such an extent that you were willing to expend \$68,000.00 in an effort to get it?

A. We spent the \$68,000.00 to alleviate the suffering of the people out of work.

Q. That was all part of the effort to get the contract?

A. Certainly the people here struck in order to try to get a contract.

Q. That was all a part of the program that you expected would culminate in obtaining the contract that the organization wanted, wasn't it?

A. I would like to explain one thing—

Q. I didn't ask you to explain anything. Your counsel can get in your explanation. Just answer the question.

A. The International Union wasn't spending this money—

Mr. Wilkinson: I move to exclude that as not responsive.

[fol. 438] A. The people in Decatur were here involved—

Mr. Wilkinson: I didn't ask about the people in Decatur. I move to exclude the statement about the people involved, move to strike it out as not being responsive.

Court: When he has answered, I will rule.

A. The money was spent to help to feed the people in Decatur who was out of work.

Q. That was a part of the program to obtain the contract from the copper plant?

A. Not necessarily.

Q. That was the effect of it, wasn't it?

A. We didn't obtain the contract.

Q. But you wouldn't have spent a dime if you hadn't hoped or expected to get a contract.

A. That is not true. We do spend money where we never get a contract and in our opinion, we don't hope to get a contract, but people who need assistance, we are obligated to assist them in welfare.

Q. Didn't you expect to get a contract in this case when you started out?

A. We hoped to.

Q. That was the basis for spending the money?

A. I don't say that was a true statement.

Q. Would you tell this jury you would have come into Decatur and conducted the operation they were conducting here and supervised the strike had you not felt you would have gotten the contract?

A. Yes, sir, I am obligated to do that.

Q. Where are you obligated to do that?

A. I am obligated in our union to help people who are members of our union who are on strike for needed welfare.

Q. The members of your union were not on strike when you came to Decatur.

A. Not the first time I came.

Q. Nothing in the Constitution of your order that obligated you to come into a community and furnish financial assistance to people who are working, have good jobs and who don't need financial assistance is there?

A. We didn't furnish welfare to anyone in Decatur until they were out of work and needed that aid.

Q. Out on the strike?

A. Yes, sir.

[fol. 439] Q. How many individuals did your union, your organization furnish financial assistance to beginning July 18th or any date subsequent to that up until the strike ended?

A. I don't have that number.

Q. You have any idea?

A. I cannot; it would be a guess; I would say probably around two or three hundred people.

Q. Two or three hundred people. Mr. Starling, have you had much or little experience testifying as a witness for this union?

A. This is the first time. I ever have testified as a witness.

Q. Have you been before the National Labor Relations Board as a witness?

A. No, I have not.

Q. You didn't testify there?

A. No.

Q. You never testified in court?

A. I have testified in court but not where the union was involved until this time.

Q. Let me ask this: Didn't you assure the men out here that if they struck that the company would have to give them a contract?

A. I did not.

Q. And didn't Mr. Volk, in the meeting in the union hall in Decatur, tell them that not one pound of copper could enter that plant until the strike terminated?

A. I don't recall.

Q. Were you there when Volk addressed the meeting?

A. On what date?

Q. The different meetings on the 17th, and 18th subsequent to the strike?

A. I was at both meeting- on the 17th.

Q. Volk there?

A. Yes, sir.

Q. Addressed the meeting?

A. I believe that he did. I am not sure about that.

Q. Can you tell us anything he said?

A. I don't recall.

Q. Duncan there?

A. Yes, sir.

[fol. 440] Q. He address the meetings?

A. As I recall the meeting, Duncan's conversation at both meetings was primarily reporting on the contract negotiations. He was participating in the negotiations with management.

Q. Can you tell us anything that Duncan told either or both meetings?

A. The only thing I recall is his report on the status of the contract negotiations.

Q. That you couldn't reach an agreement?

A. Yes, sir.

Q. Anything else said by Duncan at either one of those meetings?

A. I don't recall anything specific.

Q. Did you hear Duncan recommend they not accept the offer the company had made?

A. If he did, I don't recall it.

Q. Did you recommend they not accept it?

A. I didn't speak to either meeting at all until the vote had been taken to strike. I made no recommendation.

Q. Did Volk recommend the company offer be rejected?

A. I don't recall.

Q. You don't know?

A. I don't know because I don't recall the details of either one.

Q. You say you never formed the local union here; it wasn't formed in Decatur?

A. Correct.

Q. You didn't have any local union in Alabama at that time?

A. Yes, sir.

Q. Where?

A. We have a local union in Monroeville, in Gadsden and we have two local unions in Birmingham. We only had one at that time in Birmingham.

Q. So you had three in Alabama at that time?

A. I believe that is the only locals we had in Alabama.

Q. You had none in this North Alabama territory?

A. None in this area.

Q. The dues in the local union started when the local union is chartered, do they not?

A. Unless they are exonerated from the payment of dues by the International Executive Board.

Q. The dues in the local union are \$2.50 a month per man?

A. They are.

[fol. 441] Q. And the initiation fee is from \$2.00 to \$15.00 in the local union?

A. That is correct.

Q. And what was the initiation fee set at that time, \$2.00 or \$15.00, or a figure in between?

A. At \$1.00.

Q. That was below the \$2.00 minimum?

A. That is correct, but you have authority to reduce the initiation fee to the amount that is due to the International Union only and so that was done here and was only one dollar initiation fee charged.

Q. That went to the International Union?

A. Yes, sir.

Q. How many members did you have here?

A. I could not give that number. I don't have that figure.

Q. What was the potential membership based on the employment in the plant?

A. I believe around five hundred; I am not sure.

Q. So that if your organization was successful in perfecting a local union, and successful in getting the people who worked in the plant to join, 500 members, you would be collecting \$1,250.00 a month?

Mr. Adair: I object; that's argumentative. It is a matter of arithmetic; calls for a conclusion.

Court: Sustained on that.

Mr. Wilkinson: We except.

Q. If your union collected \$1,250.00 in dues, one-half of that amount goes to the International Union would it not?

A. That is correct.

Q. In other words, the International Union charge \$1.25 per capita tax per member, did they not, per month?

A. Correct, where dues are collected.

Q. Each dues-paying member would have to pay \$1.25 to the International Union?

A. The local union would have to pay that. He does not pay directly.

Q. He pays to the union, local union, and they remit to the International Union?

A. Correct.

Q. What procedure do they use to show how the tax on the member is paid?

A. The local union, at the end of each month, have a report they make out to the International Union showing

the number of people who have paid dues to the local union during the previous month and showing on this report that [fol. 442] they are including \$1.25 per member for those people who have paid dues during the previous month to the local union. The report also shows that 25¢ of that is earmarked to be set aside to the International Union for a strike fund, 10¢ is paid to the CIO in per capita tax, 5¢ set aside for the official publication of the International Union, 2½¢ is set aside for educational purposes, etc. In other words, the report that the local union sends the International Union sets out the allotment of all funds into earmarked funds as to how the International will expend that money.

Q. In addition to the strike fund that you spoke of set up by the International Union, the local union is to set aside 5¢ out of each \$1.00 for a strike fund?

A. Correct.

Q. When were you in Decatur prior to the meetings that were held on the 17th of July, 1951?

A. I got in Decatur on the afternoon of July 16th.

Q. July 16th? And who did you contact when you got here?

A. As I recall, I came to Decatur from Atlanta with Duncan, and we contacted Mr. Volk here first at the hotel.

Q. Had you been to Decatur before July 16th?

A. Yes, sir, I had.

Q. When?

A. I was in Decatur I believe it was on three occasions before the strike actually occurred.

Q. Give us the dates.

A. I don't recall the dates.

Q. How long before July 16th, in your judgment, were you here?

A. I don't believe I had been to Decatur since the last election was held until I came in July 16th.

Q. When was the last election held?

A. The latter part of April as I recall.

Q. You were here in April. Was there any strike?

A. No, sir.

Q. Any preparations for a strike at that time?

A. No, sir.

Q. Were there any preparations for a strike on July 16th?

A. Not on the 16th; there was not.

Q. When were the first preparations made for striking the plant?

A. The first preparations made was made previous to [fol. 443] my coming on July 16th when the local union took a strike vote as provided for under our Constitution.

Q. Thought you said there wasn't any local union?

A. The membership did. There wasn't any local.

Q. The group of employees took a strike vote?

A. The members of our union working in Wolverine took a strike vote.

Q. When was that?

A. I don't recall that date. Sometime in June, I believe; I wasn't here at that time.

Q. And the first time you came over here subsequent to that strike vote being taken was on July 16th?

A. Correct.

Q. When the meeting was held on the 17th in the union hall, I will ask you if it isn't true they had placards painted that were going to be used by the pickets the next day?

A. To my knowledge, they did not. If there were any placards painted at that time, I didn't see them and did not have knowledge of them.

Q. Did you inquire about them?

A. I did not because we had not decided at that time to strike.

Q. When were the placards printed?

A. They fixed some placards after the second meeting that afternoon.

Q. Who?

A. I don't recall who.

Q. Where was they fixing them?

A. Working on them at the hall.

Q. Union hall?

A. After the second meeting, yes, sir.

Q. Do you know anybody who worked on them?

A. I know Mr. Volk was one of the fellows that was working with some of the boys that worked on the placards. To name an individual, I could not.

- Q. Volk the only man you could name?
- A. As I recall, he was working with them.
- Q. That Michael Volk you are speaking of?
- A. Yes, sir.
- Q. He here?
- A. No, I don't think so.
- Q. You haven't seen him?
- A. He has been here.
- [fol. 444] Q. Since the case started?
- A. No, I don't believe since the case started.
- Q. Volk at that time was, I believe you said, International Representative?
- A. Correct.
- Q. And is he still International Representative?
- A. Yes, he is.
- Q. How much was he paid; what salary was he paid as an International Representative?
- A. His salary was \$100.00 a week.
- Q. And traveling expenses?
- A. Sir?
- Q. He also allowed \$15.00 a day traveling expenses?
- A. No, sir, he wasn't allowed \$15.00 a day.
- Q. What was Duncan's salary as Assistant Regional Director?
- A. \$115.00 a week.
- Q. Was he allowed traveling expenses?
- A. Certain traveling expenses.
- Q. Up to what limit per day?
- A. If he traveled by automobile, he was allowed 5¢ a mile for mileage in driving his automobile, and when he was out of town, he was allowed the same expenses of other representatives of the International Union.
- Q. Not exceeding \$15.00 a day?
- A. He was allowed a hotel bill not to exceed \$6.50 a day and was allowed \$8.50 a day for his meals and incidentals, but if his hotel only cost him \$3.00 he could only turn in \$3.00.
- Q. He got his actual expense not to exceed \$15.00 a day?
- A. No, that is not correct.
- Q. Explain it to me. I understood he was allowed hotel, meals.

A. A lot of times, actual expenses when out of town run over \$8.50.

Q. He was allowed actual expenses not to exceed \$15.00?

A. That is not correct.

Q. What's wrong about it?

A. I explained, a lot of times when out of town, your meals and incidentals would run over \$8.50 a day, and when they do you cannot collect but \$8.50 a day from the International Union. If you get a hotel room for \$3.00, then your account isn't \$15.00 but totals \$11.50.

Q. What I am trying to get over is this proposition: A man away on business, if his expense was less than \$15.00, he got actual expenses?

[fol. 445] A. The hotel room paid whatever he has to pay for a hotel room provided it is not over \$6.50, but his other expenses, if he runs over \$8.50, he cannot collect.

Q. \$6.50 and \$8.50 make \$15.00!

A. Correct.

Q. If his total expenses didn't amount to \$15.00 he gets what his expenses were in instances which they don't total \$15.00?

Mr. Adair: I object to arguing with the witness. He has explained it over and over.

A. Under our expense allowance in our union, your expenses may run less than \$15.00 per day, but still you can't collect what they actually amounted to.

Q. Say he is allowed \$6.50 for a hotel—

A. If he has to pay that.

Q. If he doesn't have to pay that, he only gets what he actually pays. \$8.50 for other purposes, if he actually has to pay it?

A. Correct. If he pays more than \$8.50, he cannot collect but \$8.50.

Q. Did you arrange for transportation of pickets to and from their home to the picket line?

A. That was handled by the committee that was set up. So far as pooling the rides and all, I didn't arrange for it personally myself.

Q. You didn't arrange for it. I believe you testified it takes about a week to arrange a picket line?

A. Usually, to get it set up and get all the things worked out and get it to working as we would like for it to work, it usually takes about a week.

Q. You had about 250 people out on strike?

A. I don't know the number. I don't have that figure. I think it was more than 250.

Q. More than 300?

A. I think it was.

Q. That consisted of three shifts at the plant?

A. That is correct. That is the way we originally set it up.

Q. Your picketing was organized in shifts of one, two and three, corresponding to the three shifts working in the plant?

A. Correct.

Q. And on the first shift, you had a picket captain, didn't you?

A. Yes, sir.

Q. It was his duty to take the men on the first shift and [fol. 446] arrange them for periods of picket duty?

A. That's right. Rotate the picketing. Some of the fellows would walk the picket line for a while and then they would have relief.

Q. That was details left up to the picket captain?

A. Correct.

Q. Same thing true of the other two shifts?

A. Correct.

Q. I believe you said you made a statement to the two meetings held on the 17th was for all members to show up at the picket line?

A. To the second meeting; not to the first meeting.

Q. You didn't advise them to show up?

A. I told them they would be notified as to the outcome of the second meeting.

Q. They were expected at the picket line, were they not?

A. I didn't make that statement in the first meeting instructing them to show up at the picket line.

Q. You left that message to be conveyed by word you wanted them out there?

A. We wanted all of them out there.

Q. Did you suggest to them that they cause other people to come out there, friends, sympathizers, relatives?

A. No, I did not. I only appealed to the people who worked in the plant.

Q. Did Volk or Duncan suggest that they appeal to their friends and sympathizers, relatives and members of the family to come out there?

A. I don't recall if they did. I couldn't say whether they did or not.

Q. You don't remember about that?

A. I don't recall it.

Q. Mr. Starling, did your organization contact the local representative of the National Surety Company and arrange for bail bonds just before the plant reopened on August 22, 1951?

Mr. Adair: We object; immaterial to this proceeding.

Court: Overruled.

Mr. Adair: We except.

A. Our union has an agreement—

Q. I didn't ask about that. I just asked if they made arrangements for bail bonds with the National Surety Company just before the plant reopened?

A. We made that arrangement several years ago.

[fol. 447] Q. Where did you make the arrangement?

A. It was made by the Secretary-Treasurer with them through the New York office.

Q. Did you also arrange with the Decatur office of this National Surety Company for the Decatur office to write surety bonds for any members of your organization that needed them up to \$5,000.00?

A. That is correct.

Q. What date did you make those arrangements in Decatur?

A. I don't recall the date.

Q. How long was it before the plant reopened?

A. I don't recall. As I recall, it was some time before the plant was reopened. I know that I was contacted on the matter, and I called the Secretary-Treasurer in Detroit and he said he would contact the New York office and make those arrangements.

Q. You were contacted when they published a full page advertisement in The Decatur paper that the plant was going to reopen?

A. I was contacted before then.

Q. You positive about that?

A. Yes, I discussed the question of the bond before that date as I recall with the Secretary-Treasurer.

Q. Who contacted you with reference to making bail bonds in Decatur before the plant reopened?

A. It was one of the representatives of the International Union. I don't recall whether it was Duncan or Volk. I could not be positive about that.

Q. Did he advise you that a movement was under way to reopen the plant?

A. As I recall, the first that I knew about a movement—

Q. I just asked if he advised you of that fact when he contacted you?

A. When he contacted me about the bond?

Q. Yes.

A. Not as I recall, he didn't advise me of that fact at that time.

Q. Did he tell you in that conversation that a back to work movement was being organized in Decatur?

A. Not when he first contacted me.

Q. When did you first hear about the back to work movement?

A. I heard about that, I was called in North Carolina; I was called and told about the ad that the company run in the paper stating they were reopening the plant and I was also told that the State police were being sent into [fol. 448] Decatur. I believe that was on the 21st of August.

Q. I will ask you if it isn't true on the 21st of August that the arrangements were made with Mr. Rankin of the Tennessee Valley Insurance Company to write bail bonds?

A. That might be true that it was made, the arrangements were made by the New York office on that date, I don't know what date the New York office contacted them. I don't know the date the Secretary of the union actually contacted the New York office.

Q. You contacted the Secretary-Treasurer of your organization by long distance telephone?

A. As I recall, I did.

Q. And he acted promptly and advised you that he sent a telegram or had a telegram sent here to the local representative of the surety company, did he not?

A. I don't recall when I called. No, he didn't tell me he was sending a telegram to the local bonding office here. As I recall my discussion with him, he didn't contact the bonding company here in Decatur. He contacted the New York office, and they contacted the bonding company in Decatur and as I recall, there was some problem of working it out and it wasn't immediately worked out.

Q. When you contacted the Secretary-Treasurer of your organization, you requested him to arrange for bonds to be made in Decatur?

A. Correct.

Q. He told you he handled that immediately?

A. He told me he would handle it.

Q. I want to show you a telegram dated August 21, 1951 and see if that telegram corresponds with the understanding you had with your general secretary with reference to bonds?

A. (Reading telegram). What is the question in connection?

Q. Does the instruction contained in that telegram correspond to the request you made of the Secretary for the arrangement of bonds here?

A. I requested that arrangements be made for bonds. As I recall, I didn't give any specific amount.

Q. You didn't give any specific amount? Alright. Do you know Mr. Rankin?

A. I do not.

Q. You didn't call on him personally?

A. I did not.

Q. Was anybody in jail who was a member of the union [fol. 449] at the time you requested arrangements be made for bonds?

A. As I recall, there had been an arrest made.

Q. Anybody in jail that you knew of at that time or that you can now recall?

A. If it was, it wasn't called to my attention.

Q. Give the jury now, in your best judgment, the date that you first had a conversation with anybody with reference to arranging for bail bonds to be made here in Decatur for members of the organization.

Mr. Powell: That's repetitious; he's been over that for thirty minutes.

Court: Overruled.

Mr. Powell: We except.

Court: Do you recall?

A. I don't recall the date. I cannot recall the date.

Q. Give us your best judgment.

A. As I recall, it was sometime before August 21st, but the date I cannot recall.

Q. How many days before August 21st?

A. If I knew that I could answer.

Q. I am asking for your best recollection.

A. I could not tell you.

Q. You mean you have no recollection on the subject?

A. Yes, I have a recollection on the subject, but I don't remember the exact date.

Q. If you have a recollection on the subject, give us the best recollection you have. You said something about being before August 21st. I want to know how long before August 21st, in your best judgment.

Mr. Adair: He has been through and through that; he doesn't have any recollection.

Court: We have got a statute that on cross examination you can sift the witness. I will let him sift.

A. I do not recall the date that I contacted the Secretary-Treasurer relative to the bond. As I recall it was sometime before the 21st and the reason I say before the 21st is because, as I recall the facts of the case, this happened before I knew anything about the ad that the company run in the paper and the fact that the State police were going to be sent in, but I could not name the date.

Q. When you reached Decatur just prior to August 21st, what time did you arrive?

[fol. 450] A. I didn't arrive here prior to August 21st.

Q. Were you hear on August 21st?

A. I was not.

Q. You in Atlanta?

A. No.

Q. In this territory at all?

A. No, in North Carolina.

Q. What point did you speak from when you talked to the Secretary of your organization about making bonds or arranging for bonds to be made?

A. I don't recall where I made the call from.

Q. You don't know whether you were in Georgia, Atlanta, Alabama or where?

A. I would think I was probably in Atlanta, because I left Atlanta and went to North Carolina to summer school.

Q. What time did you leave Atlanta?

A. As I recall, I left it on Sunday. I believe—I don't recall what the 21st was on, what day of the week it was on.

Q. Then if you made the call from Atlanta, would it be your judgment you made it on Sunday before the 21st?

A. I don't think I made the call on Sunday, because I don't recall calling Mazey at home.

Q. Would you say you called him on Saturday before the 21st?

A. It might have been; I don't know.

Q. You just don't know?

A. That is correct.

Q. You have any record from which you can obtain the date of that call?

A. I don't suppose I could unless the telephone company keeps a record of these calls.

Q. So the best you are able to give the jury, it was some time prior to August 21st you phoned the Secretary with reference to making arrangements to have bonds made in Decatur?

A. Correct.

Re-direct examination.

By Mr. Adair:

Q. There has been a good many questions asked you about what the union expected to get out of this organiza-

tion over here in the way of profit. Is your organization organized for profit?

A. It is not.

[fol. 451] Q. Is it a corporation?

A. It is not.

Q. Do you know what the objects of the organization are?

A. It is a voluntary organization to promote the welfare of the workers in mass production industry; briefly, that is the purpose of our organization.

Q. Is there a distribution of funds among the members in the way of profit or surplusage?

A. There is not.

Q. What are the funds used for?

A. The funds are used as allotted by the local union representatives assembled in Convention. The International Union is obligated to use those funds in that manner, and of course, the local union representative convention allot those funds, at least, what is in their opinion, to the best interest of the working people covered by the union.

Q. Mr. Starling, you spoke several times about "convention." Just what is this convention you are speaking of?

A. Convention is the highest authority in our union, and each local union is represented at the convention. A local union with 100 or less members is entitled to one delegate and one vote at the convention. Then from there on up, from one hundred on up to as many as they have, entitled to one vote for each 100 dues-paying members or major fraction thereof, and the number of delegates is allotted under the Constitution as one additional delegate for the next 300 members, and allowed one delegate for the next 800 members or major fraction.

Q. You talked about "allowed". You mean allowed under the Constitution?

A. That is right.

Q. Was this Constitution adopted at such convention of employees?

A. All provisions of our Constitution are adopted, voted on and adopted by the representatives from the various plants within our union at convention.

Q. At these conventions, do union officials or union offi-

cers of the International, do they have any voice in that convention? Can they be a delegate?

A. They can only be a delegate provided they are elected as a delegate from their own local.

Q. How about the top officials, President, Secretary?

A. Nobody is a delegate to that convention unless he is [fol. 452] elected a delegate by his own local union. Not just any local. It has to be from his local union.

Q. What is done at these conventions; how often are they held, so that the jury will understand?

A. Conventions are held every two years. It may vary a few months because of the difficulty in getting hotel accommodations to hold the convention. In the convention, there is a committee set up before the convention, of delegates from various local unions to handle different subjects. There is a Constitution committee that is set up prior to the convention. They meet some two weeks before convention, and any local union that has a suggestion or recommendation as to a new provision in the Constitution or a change in the Constitution, sends this in to this Constitutional committee (which are workers from the plants; they are elected by the local union as delegate to the convention); they go over the proposals and recommendations made by the various local unions and then they come into the convention with a recommendation of their own as to what they think the changes or additions or deletions from the Constitution should be and they make their report on each provision to each section to the Constitution. The delegates to the convention discuss their recommendations and then they either vote to accept or vote to reject, and where the rejection is made, then it automatically goes back to the committee and they try to come out with a report that will be accepted to the delegates. If they reject it the second time, it becomes the property of the delegates and they make their own motions.

Q. The convention, as I understand it, is the supreme authority in the union?

A. That is correct.

Q. They also have elections in this convention?

A. Correct.

Q. Is the office you held an election office?

A. Yes, sir.

Q. Have you recently attended the convention?

A. Yes, the latter part of this past March.

Q. Did the delegates at that convention take any action on the election, as far as your own office is concerned?

A. Yes.

Court: That's already in.

Q. Mr. Starling, in going into unorganized communities, does the union frequently run into interference in the way of local ordinances prohibiting union solicitation?

[fol. 453] Mr. Wilkinson: We object; what's that got to do with this case?

Court: Sustained.

Mr. Adair: I think that is material and I can connect it up. I merely want to show that and offer to show that throughout the country, not as much now as use to be, there has been resistance on the part of employers, and on the part of some local Chambers of Commerce to unions coming in, and that union people are often arrested some time for cause and sometime not for cause, and because of that, it was necessary some years ago to make bonding arrangements, and it was in that connection that Mr. Rankin was contacted, and after Mr. Rankin was contacted, Mr. Harris, counsel for Mr. Rankin, was contacted, and no bonds were furnished by Mr. Rankin.

Mr. Harris: Are you testifying?

Mr. Adair: I am showing what I offer to show.

Court: Go ahead.

Mr. Wilkinson: We except.

Q. Mr. Starling, what has been your experience as Regional Director of being able to make national bonding arrangements as in contradistinction with local bonding arrangements?

Mr. Harris: We object; that's immaterial.

Court: Overruled:

Mr. Harris: We except.

A. We found on numerous occasions that it was necessary to furnish bonds to protect our people against some

ordinances, etc., that we considered unconstitutional and sometimes locally we had difficulty in getting bonds, because some localities are inclined to be opposed to organized labor and had trouble getting bonds and that is the reason that arrangements were worked out with the national organization to furnish bonds in any place that we might need bonds for our people.

Court: That is enough on that.

Q. As a matter of fact, Mr. Starling, have you had the necessity to resort to that national bond personally?

Mr. Harris: We object.

Court: Sustained.

Q. A whole lot of questions were asked you about what kind of funds you recommended to be furnished for relief and about whether or not you recommended the termination of them or extension of them. I will ask you on Sep-[fol. 454] tember 24th the strike ended and I believe when the strike ended, the funds were terminated; what was your recommendation to the International Union?

A. I recommended that further relief be given to the people in Decatur.

Q. What was the basis of that recommendation?

A. The basis of the recommendation—

Mr. Harris: We object; that calls for a mental operation of the witness.

Mr. Adair: "Factual basis" of the recommendation.

Court: I think he has already said he made the recommendation to take care of the people who were in financial distress after that time. I think that is enough on that.

Mr. Adair: He has not given the facts necessitating making that recommendation.

Court: Whether or not they were in financial distress, he made the recommendation and that is already before the jury.

Mr. Adair: We offer to show, your Honor, that when the strike was terminated that the men who were out on strike were not reemployed at the copper plant and consequently still out of work after the strike was over, and

because of this fact, still in financial distress and recommendation was made.

Court: Go ahead. Overruled.

Mr. Harris: We except.

Q. What was the basis of your recommendation?

A. The basis of my recommendation was because until such time as the people who were on strike here could obtain employment and be able to take care—

Court: I don't think whatever moved him—his own mental operation—is evidence. I do think that if he can say these people, because of unemployment, were in distress, he can say that, and being in distress he made this recommendation. I think you can go that far.

Q. When the strike was terminated on September 24th, did the people who were on strike reapply to the company for reinstatement?

Mr. Wilkinson: We object to that; incompetent, irrelevant, immaterial.

Court: If he knows I will let him answer.

[fol. 455] A. They were instructed to reapply.

Mr. Wilkinson: We move to exclude that statement.

Court: Overruled.

Mr. Wilkinson: We except.

A. They were not given employment at that time at Wolverine Tube Plant.

Q. Do you know whether or not these defendants have still not been given employment there?

A. They have not been given employment.

Q. Questions have been asked you about whether or not you would have spent certain money for relief if you knew you were not going to get a contract. They asked you about that specifically. Now, on July 17, 1951, the day that the employees took the strike vote, did you have reason to believe that a contract would be secured?

Mr. Harris: We object; calls for a mental operation of the witness.

Court: I think that objection is good. Sustained.

Q. Did you state to the union committee, the temporary negotiating committee on that occasion that you doubted that a contract would be secured?

A. I did.

Q. That was before the strike took place?

A. Correct.

Q. You remember what day that was on?

A. July 17th.

Q. And in spite of your doubt that the contract would be secured, when these people voted to strike and did strike, you nevertheless recommended these funds being used?

A. I did because we are obligated—

Mr. Harris: That is the witness' conclusion; immaterial, incompetent.

Court: You've already testified to that twice.

Q. This money that was spent to furnish groceries, medical and emergency assistance to the strikers, did you recommend all of that whole amount at one time or did you recommend it on the basis of so much each week as it appeared it would be necessary from your investigation?

A. I recommended that on a weekly basis, and then if we had particular problems to come up where additional funds were needed, then I recommended the weekly allotment be increased to take care of the additional expense.

[fol. 456] Q. Did you make any report on that from week to week, or how did you do that?

A. Yes, we have to make a weekly report on that. That report, I report the manner for which the allotment for the previous week has been spent and also you set up somewhat of a budget for the next week; in other words, what you expect to be needed for the next week. Those reports have to go into the Secretary-Treasurer's office weekly.

Re-cross examination.

By Mr. Wilkinson:

Q. Mr. Starling, you testified a moment ago, as I recall, that the organization was not organized for profit. The primary source of this revenue and the principal source of this revenue is the dues that are charged the members and initiation fees, are they not?

A. That is the complete source of revenue.

Q. They have some investments, do they not, interest on the money in the bank?

A. Some funds are invested in government bonds.

Q. But the principal source of the revenue is the dues they collect from the members and the initiation fees?

A. Correct.

Q. The expenses of the convention are paid by the International Union, are they not?

A. Partially and partially by the local.

Q. The delegates themselves are put to no expense for attending?

A. Yes, his is paid by his local union.

Q. The International Union entertains the delegates, does it not?

A. I don't understand what you mean.

Q. Don't they furnish them entertainment?

A. The only entertainment we have at our conventions, we usually have a band and sometimes that is only for the opening day of the convention. We don't furnish entertainment during the convention.

Q. Who pays for the delegate's meals?

A. The local union.

Q. Who pays for his hotel room?

A. The local union.

Q. You said that your men who belonged to your union did not get employment after September 24th in the copper plant?

A. I was asked if they applied for employment; I said [fol. 457] they did. I was asked if they were given employment at that time; I said they were not. I did not state that no member of the union didn't get employment after

September 24th. It is my understanding that maybe one or two, possibly more, have gotten employment since September 24th, but not immediately after.

Q. Employment at the copper plant?

A. I have been told there has been some few employed.

Q. Up to September 24th the members of the union had been instructed by the officials of the union not to work at the copper plant?

A. They had not.

Q. They were out on strike?

A. They were.

Q. Not supposed to work on strike, are they?

Mr. Adair: We object to what they are supposed to do.

Court: Sustained.

Q. Your union would not allow a man on strike to work, will they?

A. The International Union—

Q. I just asked you if your union would allow a man on strike to go to work?

A. I would like to know what you mean by "union".

Q. You organization. I understand you had no local union here.

A. Certainly the International Union has no authority to prevent any one from working. The only thing in a strike that prevents people from working is their own will not to work. Our International Union has no authority to call a strike. If the strike is called, it has to be called by the members involved in the dispute and when the strike is called off, it has to be called off by that same membership. We have no authority to call it.

Q. Let me ask you: The union operates an educational department?

A. Yes, sir.

Q. Don't you instruct your members when a plant is struck that no member of this union who is loyal to it will work in that plant?

A. That is not necessarily true, because some strikes we consider that are not legal and a strike that we should support.

Q. This strike was a legal strike?

A. Yes, sir, and we were supporting it.

Q. I will ask you if, as a part of your educational campaign, you don't instill in the members and teach them that when a strike is on no member of your union will work while the strike is on?

A. If it is a legal strike authorized by the union, that is true.

[fol. 458] Q. If it is a legal strike authorized by the union, that is true?

A. Yes, sir.

Q. So it was part of the teaching of your union as long as the plant was struck, no member of your union should work in there?

A. The teaching of our union is that so long as the majority of the strikers want to continue, that all members should observe that teaching.

Q. And refrain from working?

A. Yes, sir.

Q. And if a member of the union had gone and worked while the plant was struck and before the strike was called off, he would have been subject to expulsion from the union?

A. Depending on the circumstances. He could not be expelled from the union without a trial under the Constitution as provided for.

Q. I understand you have to do that, but he would be subject to have charges preferred against him?

A. Yes, sir.

Q. And could be expelled?

A. He could be if the workers trying him thought he was guilty sufficiently to be expelled.

Q. On September 24th they called off the strike and recommended the men to return to work?

A. The strike wasn't called off by the International Union. It was the recommendation of the International Union that a meeting be called of the workers in this strike and that we recommend to them that they vote to cease the strike and return to work.

Q. Did you go to Detroit and confer with President Reuther about this strike?

A. I did.

Q. Didn't he tell you this plant was engaged in material essential to national defense, and he recommended the strike be called off?

A. He told me that—

Q. Did he tell you that?

A. Not exactly. That is partially what he said.

Court: He's got a right to answer in his own way.

Q. That was included in his statement to you?

A. Partially.

Q. It was a part of the statement he made to you?

A. Partially.

Q. And it was following that that the strike was called off, wasn't it?

[fol. 459] A. The people here in the meeting that were involved in the strike voted to end the strike.

Q. You recommended that; isn't that true?

A. Yes, sir.

Q. You conveyed the message that President Reuther recommended it be called off?

A. I conveyed to them this information: That I had discussed this problem with the President of our International Union, Walter Reuther, and he had told me that the case had been certified; that the—I can't call the name of the board—that the defense department considered some of the work being done in this plant as essential to the defense program and that the dispute in the Decatur Wolverine plant had been certified to the Wage Stabilization Board and therefore, it was his recommendation that a meeting be called of the people involved in this strike and it was his recommendation that they vote to call off the strike and return to work in order to not interfere with the defense production.

Q. So they met and called off the strike?

A. Correct.

Q. When was it you told them you doubted a contract would be secured? Who did you tell?

A. The committee.

Q. Negotiating committee?

A. Yes, sir.

Q. When did you tell them that?

A. On the day before the strike was called.

Q. July 17th you informed them at that time you doubted a contract would be secured?

A. Correct.

Q. There are no ordinances of the City of Decatur that you knew about or were familiar with that called for any arrangement for bonds to be made by the National Surety Company, were they?

A. I don't know of any ordinance any place that requires any organization to make arrangements for bonds.

Q. Any ordinance of the City of Decatur that caused you to call the Secretary about arrangements for bonds?

A. Not to my knowledge.

A. J. COLLUM, next witness for the defendants, being first duly sworn, testified:

[fol. 460] Direct examination.

By Mr. Adair:

Q. Is your name A. J. Collum?

A. Yes, sir.

Q. Albert Collum?

A. Yes, sir.

Q. Where do you live, Mr. Collum?

A. Falkville.

Q. Falkville, Alabama?

A. Yes, sir.

Q. How long have you lived there?

A. About twelve years.

Q. You a family man?

A. Yes, sir.

Q. Have some children?

A. Yes, sir.

Q. Where did you live before you lived in Falkville?

A. Cullman County.

Q. Were you working at the copper plant before the strike out there?

A. Yes, sir.

Q. What kind of job did you have?

A. Pin and die shop.

Q. What was your work?

A. Making pins.

Q. Who was your foreman?

A. Mr. Crites.

Q. Mr. Collum, you recall the occasion of the strike there on the 18th of July, 1951?

A. I was out there.

Q. You working on the 17th?

A. Yes, sir.

Q. Were you a member of the union?

A. No, sir.

Q. Had you attended, on the 17th day of July, a union meeting, either one?

A. No, sir.

Q. Did you come to work on the morning of the 18th of July?

A. Yes, sir.

Q. Will you tell us who you came to work with?

[fol. 461] A. Teague and Mr. Junkins.

Q. Comer T. Junkins?

A. Yes, sir.

Q. Tell us just what happened in connection with your coming to work that morning; whose car were you in?

A. Mr. Teague's.

Q. Comer T. Junkins riding with you?

A. Yes, sir.

Q. That Daly Teague?

A. Yes, sir.

Q. Tell us just what happened as you got in the vicinity of the plant.

A. About approximately 300 yards this side of the plant, we stopped. The traffic was lined up. We knew there was a picket line up there.

Q. When did you first learn there was one up there?

A. It had been talked there would be one there before we got there. We drove up and stopped approximately 300 yards this side and got out and walked up to the picket line.

Q. Where did you stop?

A. Back this side of the Universal Pipe Company.

Q. If Mr. Junkins testified he stopped about one-fourth

mile from the plant, is that substantially in accordance with your recollection of it?

Mr. Wilkinson: We object to repeating the testimony of another witness.

Court: Sustained.

Q. You say you stopped there. Did anybody direct you to stop?

A. No, sir.

Q. Do you know the occasion for stopping?

A. All the traffic was stopping, pulling over and parking there, and there would be no parking place up further to park.

Q. You would have ordinarily come on into the plant?

A. Yes, sir, ordinarily, but all the traffic was stopping. We didn't stop until we knew the picket line was there.

Q. How?

A. It was talked before we got there.

Q. You testify when you saw the cars parking on both sides you knew there was a picket line?

A. That's right.

Q. What did you do at that time after you parked?

[fol. 462] A. We got out and walked up to the picket line.

Q. What did you do after you got there?

A. Stood there with the rest of the boys, up there with the bunch. We stayed there approximately 2 hours and went back home.

Q. Did you inquire about going through the picket line?

A. No, sir.

Q. Did you ask anybody if the plant was open?

A. No, sir.

Q. Were you with Junkins at that time?

A. I could not say I was right with him for he probably stopped and talked to somebody else.

Q. Did you see Junkins try to go through the picket line?

A. No, sir.

Q. You live out pretty close to him?

A. Three-fourths of a mile or a mile of him.

Q. On that morning, tell us what you observed in the

vicinity of the picket line, what was going on there around where the boys were walking.

A. Well, about the only thing I noticed was the salaried personnel was going in. The boys were moving out of the street and letting them by and the boys were just walking around. Nobody trying to go through except the salaried personnel at that time.

Mr. Harris: We object and move to exclude that "nobody was trying to go through". It calls for the conclusion of the witness and doesn't state the facts on which he bases that.

Court: Did anybody appear to be trying to go in?

Witness: One tried to go in.

Court: Besides that?

Witness: One car tried to go in.

Court: Go ahead.

A. Mr. Russell parked up at the picket line and wanted to go through. He was asked not to go through; rather he wouldn't; he was talked to for several minutes and didn't go through. He turned around and left.

Q. Did you hear what was said to him?

A. No, sir, I didn't.

Mr. Harris: We move to exclude the statement of the witness that Mr. Russell was asked not to go through.

Court: Did you hear that?

Witness: Yes, sir.

Court: Overruled.

[fol. 463] Mr. Harris: We except.

Q. Did you hear anybody tell him he couldn't go through?

A. No, sir. They were talking in a nice conversation.

Q. In a nice conversation?

A. Yes, sir, no foul language was used, no threats were made whatever.

Q. How close were you to the car?

A. Approximately three or four feet of the car.

Q. Three or four feet of the car?

A. Yes, sir.

Q. Did you hear anybody talk to him about whether or not the plant was closed?

A. I don't remember.

Q. Did you hear anybody talking to him about whether or not salaried employees alone were being allowed in to the plant?

A. No, sir.

Q. Did you hear anybody threatening him?

A. Sir!

Q. Did you hear anybody threatening him?

A. No, sir.

Q. Did you see anybody hit him?

A. No, sir.

Q. See anybody attempt to turn the car over?

A. No, sir.

Q. Shaking his car?

A. No, sir.

Q. Hit his windshield?

A. No, sir.

Q. His bumper?

A. No, sir.

Q. Did you see anybody seize his car and shake it?

A. No, sir.

Q. Did you see Howard Hovis standing up with his arm in the window talking?

A. Yes, sir.

Q. Did you know at that time Howard Hovis was a fellow-worker with Russell; they both electricians in the same department?

A. I did.

Q. Worked together every day?

A. Yes, sir.

[fol. 464] Q. And in three or four feet of that conversation, and if there had been loud talk or threats, you would have heard it?

A. Yes, sir.

Q. Mr. Collum, did you do picketing on that day?

A. No, sir.

Q. Did you do picketing at any time between July 18th and August 22nd, the day the plant reopened?

A. No, sir.

Q. Were you a member of the union at any time between July 18th and August 22nd?

A. No, sir.

Q. You were not?

A. I was not.

Q. Mr. Collum, were you approached at your house by Comer T. Junkins and asked to sign a petition to get the plant reopened?

A. He came to me on my job, to a job where I was painting.

Q. Where was that job?

A. There in Falkville.

Q. Falkville?

A. Yes, sir.

Q. Can you give us more definite than that; somebody's house?

A. Yes, sir.

Q. Whose?

A. J. W. Aldridge.

Q. Painting his house?

A. Yes, sir.

Q. You recall when that was?

A. No, sir, it was the latter part of July or first of August. I don't remember the date.

Q. Comer T. Junkins came up to you there?

A. Yes, sir.

Q. What did he say?

A. Said he had a piece of paper, petition he wanted me to sign to get the company to open the plant where we could go back to work. If he could get approximately 250 men to sign, the company would reopen.

Q. Said he had a piece of paper and wanted you to sign to get the company to reopen; if he could get 250 names, he thought the company would reopen?

A. Yes, sir.

[fol. 465] Q. What did you tell him?

A. I told him I wasn't interested; I would see him later.

Q. Did he make any other trips to you at later times to try to get you to sign the petition?

A. Yes, sir.

Q. Where and on what occasion?

A. The same place, Mr. Aldridge's home.

Q. What did he tell you on the second occasion?

A. He still wanted to know if I wanted to sign the petition; I said "no".

Q. He contact you any more after that?

A. He came by my house, but I didn't see him; he talked to my wife.

Q. You were not there at that time?

A. That's right.

Q. Mr. Collum, on the day that the plant did reopen, August 22, 1951, did you go out to the vicinity of the plant?

A. Yes, sir.

Q. Did you go in to work?

A. No, sir.

Q. How far did you go?

A. I went up to where the picket line was.

Q. At that time were you a union member?

A. No, sir.

Q. At that time had you done any picketing?

A. No, sir.

Q. At that time had you taken any position?

A. No, sir.

Q. What did you do on that occasion?

A. I went out there and stayed for a short time and went back home.

Q. Why didn't you go in?

Mr. Wilkinson: We object.

Court: Sustained.

Q. Did anybody prevent you from going in on that occasion?

A. No, sir.

Q. Anybody threaten you if you did go in?

A. No, sir.

Q. Anybody threaten you on either occasion or tell you you couldn't go in?

A. No, sir.

[fol. 466] Q. After you got back home, did you receive a long distance call from some official of the company?

Mr. Harris: We object, immaterial, irrelevant.

Court: Overruled.

Mr. Harris: We except.

A. Yes, sir.

Q. Who made that call and what was the substance of it?

Mr. Wilkinson: Same objection on the same ground; inter alios acta.

Court: Overruled.

Mr. Wilkinson: We except.

A. C. B. Davis, Assistant Foreman in the shop I worked in called me on the night of the 22nd of August. He said, "I missed you; you wasn't there. You coming to work?" I said, "I don't know." He said, "I need you. If you're not in by Friday, we will send your papers to you. You won't work for the company any more if you don't come in by Friday", and I didn't go.

Q. They had not—Davis had not called you any time between the 18th of July when the strike began, and August 22nd when the company reopened and asked you to work?

A. No, sir.

Q. Did anybody else call you between July 18th and August 22nd and ask you to work?

Q. No, sir.

Q. Did they write you or notify you between those two dates to come to work?

A. No, sir.

Q. The first notice you had from your foreman or anybody else was the night the plant reopened that day?

A. Yes, sir.

Q. That the first time you had been asked to report for work?

A. Right.

Q. What did you tell Mr. Davis about whether or not you were going to come in when he called you on that night?

A. I told him I would see him later was the correct word.

Q. Did you go see him later?

A. No, sir.

Q. Did you go back in?

A. I went in after my tools.

Q. Did they let you go all the way into the plant to get [fol. 467] your tools or did you wait at the guard shack?

A. I went in after my tools.

Q. When did you go in? After the plant opened?

A. Yes, sir.

Q. Did you decline to go back to work; you didn't try to go back to work?

A. No, sir.

Q. On August 22nd you hadn't joined the union and wasn't a union member, is that correct?

A. That's true.

Q. You a contractor today, are you?

A. Yes, sir.

Q. What kind of contracting work you do?

A. Painting.

Q. Work employees under you?

A. Yes, sir.

Q. How many employees you work?

A. I've got two.

Q. Two employees?

A. Yes, sir.

Q. You contract painting jobs?

A. Yes, sir.

Q. You contracting a job in Decatur at the present time?

A. Yes, sir.

Q. You have other contracts you bid on?

A. Yes, sir.

Q. You bid on commercial painting jobs?

A. One project I bid on.

Q. What project was that?

A. A housing project.

Q. You don't paint just residences?

A. Yes, sir.

Q. That is what you are doing now?

A. Yes, sir.

Q. In business for yourself?

A. Yes, sir.

Q. That correct?

A. Yes, sir.

[fol. 468] Cross examination.

By Mr. Harris:

Q. On July 17th, did you work?

A. Yes, sir.

- Q. I am speaking about before the strike.
A. Yes, sir.
- Q. What shift did you work?
A. First.
- Q. You went to work on July 18th?
A. I went down to go to work.
- Q. You went down to go to work?
A. Yes, sir.
- Q. Did you take your lunch?
A. Yes, sir.
- Q. Junkins have his lunch?
A. Yes, sir.
- Q. Mr. Teague have his lunch?
A. Yes, sir.
- Q. Mr. Teague was a member of the union, wasn't he?
A. No, sir.
- Q. He wasn't?
A. No, sir.
- Q. When was the first thing, anything first said about the picket line by you three?
A. It was talked on the way down to work.
- Q. Whereabouts?
A. In the car coming to work between Falkville and Decatur. I don't remember the exact place; between Falkville and Decatur.
- Q. Was it before you got to where you could see all these cars gathered around?
A. Yes, sir.
- Q. What time of day did you get there?
A. Approximately 7:30.
- Q. In the morning?
A. Yes, sir.
- Q. Was that your customary time getting there?
A. Yes, sir.
- Q. Was a big crowd there when you got there?
A. Yes, sir.
- [fol. 469] Q. Where was Paul Russell's car when you first got there?
A. I don't remember seeing it when I first got there. He came in later.
- Q. Did you go to the picket line as soon as you got there?

- A. Yes, sir.
- Q. Junkins go with you?
- A. Yes, sir.
- Q. How close did you get to the picket line?
- A. Up to the picket line.
- Q. You went up to the picket line?
- A. Yes, sir.
- Q. You mean right to where you could talk to the people in the picket line?
- A. I was up to the railroad track.
- Q. Where were the pickets walking in a circle in the street?
- A. About the railroad track.
- Q. This side of the railroad track?
- A. I wouldn't say.
- Q. You didn't get beyond the pickets?
- A. No, sir.
- Q. You didn't get between them and the plant?
- A. No, sir.
- Q. Did you see any other car drive up to that picket line and get stopped before Russell drove up?
- A. Nothing but salaried employees.
- Q. Tell the jury what would happen when the salaried employees came up.
- A. They would drive up and show their pass and the boys let them through.
- Q. How would they let them through?
- A. The pickets would move back out of their way and they would drive up.
- Q. What did they do when Russell drove up?
- A. They didn't do anything; kept walking.
- Q. Didn't move back?
- A. No, sir.
- Q. Where did Russell first stop his car?
- A. Just before he got to the picket line.
- Q. How far back had you seen him approaching?
- [fol. 470] A. I don't think I noticed him until he stopped.
- Q. When he stopped?
- A. Yes, sir.
- Q. How close was he to the picket line when he stopped?

- A. He was about 10 feet; something like that.
- Q. Did he ever get any closer than that?
- A. I don't think so.
- Q. How long did you stay there and watch them?
- A. I was there when he left.
- Q. Do you tell this jury he never did move his car forward after you saw him stop the first time?
- A. I don't remember it if he did.
- Q. You were there by him all that time until he left and he didn't move forward any more?
- A. That's right.
- Q. How did he get out?
- A. He backed up, turned around and left.
- Q. Who did you see go up to his car while he was sitting there?
- A. Howard Hovis.
- Q. Who else?
- A. I don't remember seeing anyone else.
- Q. You were right there all the time?
- A. Yes, sir.
- Q. You been in the witness room over there?
- A. Yes, sir.
- Q. You know Mr. Starling that just testified?
- A. Yes, sir.
- Q. You tell us you didn't see him?
- A. I don't remember.
- Q. Did you see any men gather around his car while you were there?
- A. No, sir.
- Q. The only man you saw up at his car was Hovis?
- A. Yes, sir.
- Q. Tell the jury what you heard him and Hovis say.
- A. They were carrying on a conversation. As to hearing what was said, I didn't hear it.
- Q. Tell the jury what you did hear.
- A. It was a conversation. He drove up and stopped, and [fol. 471] Hovis was talking to him. No threats were made whatever at the time he drove up there. As to words said in the conversation, I don't remember.
- Q. You don't remember what was said?

- A: I don't remember what was said.
- Q. Where was Junkins then? You know?
- A. No, sir, I don't. Somewhere in the crowd.
- Q. Where was Teague?
- A. In the crowd, too.
- Q. You say the first notice you got to come back was when Davis called you?
- A. That's right.
- Q. You take The Decatur Daily?
- A. Yes, sir.
- Q. Did you read it August 20, 1951?
- A. I did.
- Q. Did you see that notice in it (indicating ad in paper)?
- A. I did.
- Q. Didn't that request you to report at eight on August 22nd?
- A. No, sir, it says there that the plant is resuming operations.
- Q. (indicating) Read this right here.
- A. "You are requested to report for work on the day shift at eight o'clock A. M."
- Q. You read that?
- A. Right.
- Q. In addition, did you read it on the 21st?
- A. Right.
- Q. In Addition to that, you got a circular letter from the Wolverine Tube Division like all the other employees got, didn't you (indicating letter)?
- A. I don't remember that letter.
- Q. You don't remember getting a letter like that?
- A. No, sir.
- Q. You ever talked to anybody about getting a letter like that?
- A. It's been so long.
- Q. You have no recollection whether or not you got such a letter?
- A. I don't remember.
- Q. But you did see the newspaper for two days?
- A. Yes, sir.
- [fol. 472] Q. Mr. Davis called you on the 22nd and told you that if you didn't report by the third day, the job would be gone?

- A. That's right.
- Q. You didn't report?
- A. Right.
- Q. You didn't try to get in August 22nd?
- A. No, sir.
- Q. You didn't take your lunch on the 22nd?
- A. No, sir.
- Q. You didn't want to work there?
- A. I didn't want to cross the picket line.
- Q. To whom did you first talk to about this case, about what you would testify in this case?
- A. I don't get your point.
- Q. Whom did you first talk to about testifying in this case?
- A. I think that I talked to the lawyer about it when I was subpoenaed.
- Q. Had you talked to anybody before you got your subpoena?
- A. No, sir.
- Q. You positive?
- A. I am almost sure, about coming to court.
- Q. In other words, you got a subpoena that the Sheriff gave you to come to court and before that you had not told anybody what you knew about this case?
- A. I had discussed it with different ones.
- Q. Who?
- A. I think I had talked to the lawyer about it.
- Q. What lawyer?
- A. Mr. Adair.
- Q. When did you talk to Adair?
- A. I don't remember the time I talked to him.
- Q. About how long ago?
- A. I couldn't answer.
- Q. Where did you talk to him?
- A. I don't remember that.

Redirect examination.

By Mr. Adair:

- Q. Mr. Collum, do you remember me coming to your house and telling you—

Mr. Harris: We object to leading the witness.
[fol. 473] Mr. Adair: I am not going to lead. You opened the subject up. Having talked to the witness is perfectly proper.

Q. Did I ask you for certain information that I had heard you had in regard to an unfair labor practice case filed against the company?

Mr. Wilkinson: We object; leading, suggestive, incompetent, irrelevant, immaterial; inter alios acta.

Court: The wording of the question is objectionable. Sustained.

Q. Mr. Collum, do you remember me coming to your house some months ago, maybe a year ago, talking to you about certain facts in connection with an unfair labor practice case?

Mr. Wilkinson: We make the same objections; leading, suggesting, immaterial.

Court: Overruled.

Mr. Wilkinson: We except.

A. I believe I do.

Q. Do you recall me on that occasion taking a statement from you at your house and writing down what you told me?

Mr. Wilkinson: Same objection on the same grounds.

Court: Overruled.

Mr. Wilkinson: We except.

Court: Show him the statement.

Q. I will ask you if you recall me making, writing down that statement as you gave it to me at your house? (Indicating statement)

Court: Does it purport to be signed?

A. I remember it now.

Q. Did I take down such statement at that time?

A. Yes, sir.

Q. And that statement had to do primarily with the company contacting you and giving you a deadline for getting back to work, did it not?

A. Yes, sir.

(Mr. Harris looks at the statement.)

Q. Mr. Collum, do you recall whether or not this statement was taken down from you shortly after the strike ended in 1951?

Mr. Wilkinson: We object; leading, suggestive; immaterial, irrelevant; not a proper subject for re-direct examination.

Court: "Overruled."

Mr. Wilkinson: We except.

Q. Do you recall when this statement was taken in relation to the end of the strike? Do you have any recollection?

Mr. Wilkinson: Same objection on the same lines.

Court: Alright, go ahead.

Mr. Wilkinson: Reserve an exception.

A. I don't remember the date.

Q. Do you have any recollection as to how long it was after the end of the strike? I don't mean exactly. How many months, for example?

A. We will say a month.

Q. After the end of the strike?

A. Yes, sir.

Q. Do you recall where these notes were made?

A. I believe those notes were made in my living room at my home.

Q. Do you recall whether or not your wife was there?

A. She was.

Q. Do you recall whether or not we had coffee in your living room after the notes were made?

A. I believe we did.

Q. Do you recall whether or not I read this statement to you after I had written it down and asked you if that was correct?

A. I don't remember that.

Q. You don't remember that?

A. Sure don't.

Q. You do remember me writing it down in your presence?

A. I remember.

Q. Will you look at this statement and see if that is what you told me on that occasion?

A. (Reading) I do.

Q. Is that what you told me on that occasion?

A. Yes, sir.

Q. And on that occasion when I wrote this down that was closer to the time the events happened than today?

A. Yes, sir.

Q. Fresher in your mind then?

A. Yes, sir.

Mr. Adair: I would like to introduce this in evidence as Defendants' Exhibit "2".

Mr. Harris: We have no objection.

Mr. Adair: (Reads to the jury)

Said Exhibit "2" for the Defendants is in the following [fol. 475] words^s and figures, to-wit:

"A. J. Collum	Phone—700
Falkville, Ala.	Box 213—
Pin & Die Maker	\$1.50

Opened gate on Wed. morning. Stopped at last traffic light on way to Wolverine by Webster, a plant guard. Are you going to work? "Don't think so." Well they have got 75 highway patrolmen. You can go in without any trouble. Orr, pers. man drove up & stopped. To Webster—How's it going Webster said o.k. They went thru all right.

9:30 to 10 P. M. C. B. Davis, Asst. foreman, pin and die shop, called up.

"I missed you today. I need you on the job. IF YOU DON'T COME IN FRIDAY MORNING WILL BE YOUR LAST CHANCE & THEY WILL SEND YOU YOUR PAPERS."

Comer Junkins, Rt. 1. Falkville, drove up to house where I was painting in Falkville. He said, 'Got a petition here —going to try to get company to open gates. Later Comer told me we would have to have 250 in order to get company to open. There were two names on pet. when he handed it to me Comer Junkins, Earl McCraig.'

He made two trips to my job and two to my house."

Recross examination.

By Mr. Harris:

Q. You didn't tell Mr. Adair anything on that occasion about seeing Paul Russell's car drive up, did you?

A. On the occasion he came to my house?

Q. Yes, sir.

A. I don't remember.

Q. It isn't in that statement.

A. No, sir.

Q. You didn't tell him you didn't hear any threats made that day?

A. No, sir.

Q. You didn't tell him about riding to work on July 18th with Comer Junkins?

A. No, sir.

2nd Redirect examination.

By Mr. Adair:

Q. On the occasion when this statement was taken, did I not tell you that it was in connection with an unfair labor practice case; did I tell you I was investigating an unfair labor practice case?

A. I don't remember.

[fol. 476] Q. You don't remember there was a law suit filed at that time?

A. I don't remember.

Q. Do you remember us discussing an unfair labor practice case? If you don't remember, say so?

A. I don't remember.

DAVID H. (PETE) RUNAGER, next witness for the Defendants, being duly sworn, testified:

Direct examination.

By Mr. S. Powell:

Q. State your name, please.

A. David H. Runager.

Q. Are you often times called by the nick-name, "Pete"?

A. That's right.

Q. How old are you?

A. Thirty-three.

Q. Where were you reared?

A. In Lawrence County.

Q. Have you lived part of your life in Morgan County?

A. Lived from 1945 until 1952 here.

Q. 1945 to 1952?

A. Yes, sir..

Q. Did you move over here from Lawrence County?

A. I come back out of service in 1945.

Q. You in the military service during the last war?

A. Yes, sir.

Q. How long were you in the service?

A. Five years and 8 months.

Q. What department or division did you serve in?

Mr. Harris: We object; immaterial and irrelevant.

Court: Sustained.

Q. When you came back out of service, you located in Decatur?

A. Yes, sir.

Q. What year was that?

A. 1945.

Q. Were you married at that time?

A. Yes, sir.

Q. Married while in the service?

A. Yes, sir.

[fol. 477] Q. Married now?

A. Yes, sir.

Q. Have a family?

A. Yes, sir.

Q. Pete, were you employed at the copper plant here in Decatur in July, 1951?

A. Yes, sir.

Q. When were you first employed at that plant?

A. In August, 1948.

Q. How were you employed when you went to work out there, what capacity?

A. You mean what job?

Q. Yes, sir.

A. Scale man and fork lift operator.

Q. After you had worked there as scale man and fork lift operator for sometime, did you transfer to another type of employment in the plant?

A. Yes, I went to caster helper.

Q. And you were engaged approximately how long as a caster helper at the copper plant?

A. Somewhere around a week.

Q. Did you change employment again?

A. I went to billet saw operator.

Q. And approximately how long did you stay on that job?

A. I would say about a year or year and a half.

Q. And did you change positions there in the plant after that?

A. Yes, sir.

Q. What position did you take?

A. Caster.

Q. And approximately how long did you work as caster out there?

A. Pretty close somewhere around a year.

Q. Then did you change positions again?

A. Yes, sir.

Q. What position did you take?

A. I went back to caster helper on my own request.

Q. Was your wife ill at that time when you made that switch from caster back to helper?

A. Yes, sir.

Q. You were working what shift as caster?

A. Second.

[fol. 478] Q. You requested you be put on first shift on account of the health of your wife?

A. Yes, sir.

Q. It was for that reason you took a set-back in your job?

A. Yes, sir.

Q. Were you so employed as caster helper at the Wolverine Tube Plant on July 17, 1951?

A. Yes, sir.

Q. Working the first shift?

A. Yes, sir.

Q. Did you work that shift on July 17, 1951?

A. I worked until noon.

Q. Go to work at eight or about eight that morning?

A. Yes, sir.

Q. On July 17, 1951 were you a member of the defendant union in this case?

A. I had signed a card, yes.

Q. Made application for membership in the union?

A. Yes, sir.

Q. On that occasion, did you attend a meeting at the union hall on Second Avenue in Decatur?

A. Yes, sir.

Q. How many meetings did you attend on that date?

A. I attended two at the union hall.

Q. What time or about what time was the first such meeting?

A. About one or one-thirty.

Q. In the afternoon?

A. Yes, sir.

Q. To your best judgment, how many members of that organization were present there at the first meeting on July 17th?

A. Somewhere around 150.

Q. About 150 members?

A. Yes, sir.

Q. Do you remember the particulars of that meeting, who addressed the meeting and what discussions were had on that occasion?

A. Yes, sir.

Q. Tell the jury.

A. Well, we had been negotiating for sometime and the purpose of the meeting was to—

[fol. 479] Q. At that time had you been selected and were you serving on the temporary negotiating committee of the union?

A. Yes, sir.

Q. Go ahead.

A. We had been negotiating for sometime and the purpose of the meeting was to bring the membership up on the contract and—

Q. You say to bring them up on the contract. What do you mean?

A. On what was agreed to and what was disagreed on.

Q. Had the negotiating committee, prior to July 17th, been negotiating with the company out there, working toward the bargaining of a work contract for the members of that union?

A. Yes.

Q. Had that period extended over a considerable time prior to that date?

A. Yes, sir.

Q. Have you any judgment as to the number of consultations the committee held with the representatives of the company prior to July 17th?

A. I would say somewhere around 20 or 25.

Q. Over what period of time were they held prior to that?

A. From May to July.

Q. May, 1951 to July 17, 1951?

A. Yes, sir.

Q. Besides you, who was members on the negotiating committee?

A. Howard Hovis, Drake and Ange.

Q. Norman Ange?

A. And Clyde Bradshaw.

Q. Where were those conferences usually held between the committee and the company?

A. They were held in the conference room at the main gate behind the guard shack.

Q. And in the same building the gate house is in, at the rear of the entrance of the plant?

A. Yes, sir.

Q. Go back to the meeting at 1:30 on July 17th and continue.

A. Mr. Duncan got up and made a talk on what had been agreed on and he recommended that, or at least he said we could not have a good working agreement with the contract that the company agreed on.

Q. Had the company at that time submitted a counter agreement or counter contract to the one that the union submitted to them some time ago?

A. Yes, sir.

[fol. 480] Q. Did Duncan make report there on the contract agreement, proposed agreement that the company submitted to the union?

A. Yes, sir.

Q. Go ahead.

A. He also stated about the main things that was holding up the contract up, was the three major points was union security, wages, and he got up—

Q. Arbitration was one?

A. Arbitration, that's right.

Q. Go ahead.

A. We had agreed, or tentatively agreed on most of the rest of them, and Brother Duncan also got up and recommended that the members turn the contract down. Then each one of the committeemen got up and made a talk on what had been done over the period of time during negotiations and what was agreed on and each one recommended that the contract be turned down.

Q. When was the last conference you held with the company representatives prior to July 17, 1951 in negotiating for a contract?

A. I believe it was about two or three days ahead of then.

Q. Was that the first meeting held after the last negotiations between the company and your group of representatives?

A. Yes, sir.

Q. Go ahead.

A. And then motion was brought to the house that they turn the contract down, and a vote was taken and the contract was turned down. And then a motion was also taken before the house that we strike the plant at eight o'clock the following morning, and that vote was taken and carried unanimous.

Q. Unanimous to strike the plant at eight July 18th?

A. Right.

Q. You spoke of Mr. Duncan. What capacity or what official capacity was he present there in at that time?

A. He was Assistant Director of Region 8, UAW, CIO.

Q. At that time?

A. Yes, sir.

Q. After the motions had been made and passed as you testified, tell us what else said and done.

A. Mr. Duncan got up and said that we would call the company and get a meeting and go out and ask them if they wanted us to or if they needed any key men to maintain their equipment pending the approval of the contract of the other two shifts at 4:30. Then after, the meeting was [fol. 481] adjourned, Duncan called Oakes and arranged a meeting somewhere around 3 or 3:30.

Q. Whom did he arrange the meeting for?

A. For the negotiating committee, temporary negotiating committee.

Q. You were a member of the committee?

A. I was.

Q. After the adjournment of that meeting, did you, together with Duncan and the members of the negotiating committee, hold a conference with some representatives of the company out at the plant that afternoon?

A. Yes.

Q. In your judgment, about what time was that conference held?

A. Around 3 or 3:30.

Q. Where was it held?

A. In the conference room at the main guard shack.

Q. Who was present?

A. Mr. Oakes, Robson and Kromer.

Q. Whom did they represent?

A. The company.

Q. Were all five of your committee members present?

A. Yes, sir.

Q. Mr. Duncan?

A. Yes, sir.

Q. Were you present throughout the conference held there that afternoon with the company as a member of that committee?

A. Yes, sir.

Q. I want you to tell the jury what was said and done there by each of the representative parties you have named as being present on that occasion.

A. Well, Mr. Duncan told Mr. Oakes that we had met with the second shift at 1:30 and that they had voted to turn the contract down; that they wasn't offering a contract suitable to work under; and he also told Oakes that we

were out there to offer them key men in case that the plant was struck the next morning. Mr. Oakes replied to that that the supervisors was perfectly capable of maintaining any equipment that needed to be maintained during the strike. And he said that the gates would be closed to all hourly rated employees in case of a strike, and he also turned around to Mr. Robson and asked about the brick-layers who was out there working on the lean-to at the time, and Mr. Robson said that had already been discussed and in event of the strike, that they would honor the picket line.

Q. That was before the second meeting that was held [fol. 482] later in the afternoon by the members of your organization?

A. Yes, sir, it was.

Q. Was that the substance of what was said there particularly in that conference?

A. Yes.

Q. At that time you were working there. Did you know Oakes personally?

A. Yes.

Q. What official capacity did he hold with the tubing plant at that time?

A. Well, I believe he was Personnel Manager.

Q. And identify the other members of the company that were present with respect to the official capacity in which they represented the plant or what they were employed as at the time of that conference.

A. Mr. Kromer was Plant Manager, and Mr. Robson was the head of the maintenance department.

Q. About how long did that meeting last in your judgment?

A. Somewhere around 20 or 30 minutes.

Q. After the adjournment of that meeting, did you attend a second meeting of the members of the defendant organization at the same place as the first meeting?

A. Yes.

Q. On that date. About what time was it held?

A. About 4:30.

Q. The members of the committee, along with Duncan and Starling, attend that meeting?

A. Yes, sir.

Q. In your judgment, how many people were present, members of the union present at that meeting at 4:30?

A. Somewhere in the neighborhood of 250.

Q. 250?

A. Yes, sir.

Q. Tell the jury, please, sir, what transpired at that meeting.

A. Well, practically the same thing that occurred in the previous meeting with the second shift. Mr. Duncan got up and he went over the contract and told what the company had offered and what they wanted in their proposal, and he said they didn't give us a contract suitable to work under, and he also told them about the previous meeting with the second shift in the first meeting and the meeting with the company. And then each member of the committee got up and made a short talk on it and recom-[fol. 483] mended that the contract be turned down. Then a vote was carried and a motion put before the house and a vote was carried that the contract be turned down, and then a motion was put before the house to strike the next morning at eight o'clock and vote was taken and it was carried, and then Brother Starling got up and he made a short talk and said that no liquor or any alcohol beverage would be allowed on the picket line. Said no liquor or alcohol would be allowed on the picket line at any time and that he wanted it carried on in a peaceful manner or in a gentlemenlike manner.

Q. After that meeting adjourned, was there any other official meeting to your knowledge held by the members of the organization of which you testified about prior to eight the next morning?

A. What was that?

Q. Did you have any further meeting after the adjournment of that official meeting or was that the last meeting before the strike the next morning?

A. That was the last meeting. Only part of us met in the hall the next morning to get the picket signs.

Q. And when from the lodge hall up to the plant where the pickets were activated?

A. Yes, sir.

Q. Was it reported at the second meeting—you may have testified to this—whether or not what action the second shift took at 1:30 meeting that day?

Court: That is covered.

Q. Did you go out to the entrance or near the entrance of the tubing plant on the morning of July 18th?

A. Yes, sir.

Q. Did you go direct from your home to the plant or go by the union hall that morning?

A. By the union hall.

Q. Did anyone go with you from the union hall to the plant?

A. Yes, there was some of the boys, but I don't recall which ones it was.

Q. In your judgment, what time was it, Pete, when you got out to the plant entrance that morning?

A. Somewhere around six o'clock.

Q. At the time you arrived there were there any people present there or any vehicles in that area to your knowledge?

A. No.

[fol. 484] Q. Were you first or one of the first persons to arrive there that morning?

A. I was in the first bunch to arrive.

Q. Were some other members of the union, some of these defendants that came or left the union hall and arrived about the time you did or after you did?

A. Yes.

Q. At eight that morning, what, in your judgment, was the number of people present in the vicinity of that strike?

A. Somewhere around 2000 lined up on both sides of the road.

Q. That is Railroad Avenue where the people lined up?

A. Yes, lined up.

Q. How far east would that line extend?

A. Up to the curve there where the railroad crossing is.

Q. At the railroad crossing?

A. Yes, sir.

Q. From that point west back toward town, in your judgment, how far down the road on either side would the multi-

tude of people extend; half a block, mile, half a mile or what?

A. I would say from the picket line on several blocks.

Q. To your knowledge, were all those people members of the defendant union?

A. No.

Q. You have any judgment as to the number of the members of the union present there that morning?

A. I would say around 350.

Q. Were they in that group of people? You mean 350 people members?

A. Yes, sir.

Q. The rest of them were not members of the union?

A. Well, some of them might have been members of different unions.

Q. Of the particular union you were a member of and the defendant in this case?

A. That's right.

Q. The remainder of the crowd mixed, women, children, adults, both sexes?

A. Women and children, yes, sir.

Q. Then were there cars there at that time in the vicinity?

A. Yes, sir, parked on both sides of the road.

Q. On Railroad Avenue?

[fol. 485] A. Yes, sir.

Q. How far east were the cars parked with reference to the picket line and the railroad track?

A. It was parked all the way up to the railroad.

Q. Back west how far?

A. Well, I don't rightfully know.

Q. In your judgment, would it be several blocks back toward town?

A. No, I don't know.

Q. Were the parked cars on either side of Railroad Avenue—that was paved at that time?

A. Yes, sir.

Q. Do you have any judgment as to the area of the street that wasn't taken by the parked cars open then?

A. All the cars was completely off the pavement.

Q. They were not parked on the paved portion of the surface?

A. No.

Q. From the time you got there at 6 o'clock up until 8 o'clock, *the* the crowd increase as the time advanced toward 8 o'clock that morning?

A. Yes, sir.

Q. Did you participate in the picketing on that date? Walking the picket line any?

A. Yes.

Q. Tell the jury how long you were around there on the 18th of July from the time you got there.

A. I was around there on the picket line until 12.

Q. Noon?

A. Yes, sir.

Q. Did you leave at that time?

A. Went to lunch.

Q. Come back later?

A. Yes, sir.

Q. What time did you come back out there?

A. About one.

Q. Then how long did you remain there on that date?

A. Until about 5:30 or 6 o'clock.

Q. Did you leave again at that time?

A. Yes, sir.

Q. Come back that night?

A. Yes, sir, I did.

[fol. 486] Q. What time did you come back in your judgment?

A. Around 8 o'clock.

Q. How long did you stay then?

A. Approximately thirty minutes.

Q. Leave again?

A. Yes, sir.

Q. Did you come back again?

A. No.

Q. How many people were in that picket line there that morning at 8 o'clock, in your judgment?

A. About 20, somewhere around there, 25, actually on the picket line.

Q. What was the activity of the picketing there that morning? Describe what they did in your presence that morning.

A. The pickets continuously kept marching around in a circle.

Q. In a circle?

A. Yes, sir.

Q. Do you have any judgment as to the diameter of that circle; how large a circle it was?

A. No, I don't.

Q. Can you tell the jury approximately what location with reference to the railroad or the commencement of the plant property, that the picketing was being executed on?

A. It was right on the line of the plant property; just below the last turn off to the Alabama Flour Mill.

Q. About how far or exactly how far if you know, was it between the various pickets as they made that circular motion on the picket line, the distance between the various pickets?

A. Approximately 4 feet.

Q. Approximately 4 feet?

A. Yes, sir.

Q. Was it conducted orderly?

A. Yes.

Q. Did you observe any violence on that occasion?

A. No.

Q. Hear any profanity or cursing or obscene language?

A. No.

Q. At that time did you know the plaintiff in this case, Paul Russell?

A. Yes.

Q. Did you see him out there at the picket line or near [fol. 487] the picket line on the morning of July 18, 1951?

A. Yes.

Q. Have you any judgment as to the time you first saw him there on that occasion?

A. It was around 7:30.

Q. That morning?

A. Yes, sir.

Q. What was he doing when you first observed him that morning?

A. He came in and stopped in his automobile.

Q. Drove his car in there?

A. Yes, sir.

Q. On Railroad Avenue?

A. Yes, sir.

Q. You see him when he drove up and stopped?

A. Yes, sir.

Q. By himself?

A. Yes, sir.

Q. In your judgment, how far west of the picket line did he stop his car that morning?

A. Around 20 or 30 yards.

Q. Tell the jury now what you observed and saw happen there when Russell came up and parked the car that morning.

A. Well, I saw Howard Hovis go over there and talk to him. He approached him from the left side of his automobile. Hovis was standing up kindly leaning over in the car with his elbow like this (indicating) and was talking to him. I wasn't close enough to hear the conversation.

Q. About how far were you from the car at that time?

A. I would say 10 feet.

Q. Go ahead.

A. And then Russell started his car up pretty fast and the way Hovis was hanging in the door, he was dragging him along and he was shuffling his feet or be jerked down and he stopped close to the picket line then.

Q. How far did the car move under those conditions?

A. It was from 6 to 10 feet from the picket line then.

Q. Then it stopped again?

A. Yes, sir.

Q. Go ahead.

A. And then I went over and talked to Paul.

Q. Who was over there when you went up to Paul [fol. 488] sel's car that morning?

A. Hovis and—

Q. Howard Hovis, the defendant?

A. Yes, sir, and there was a few milling around there, but I don't remember who.

Q. He the only one standing up talking to him?

A. Yes, sir.

Q. Go ahead.

Q. I walked up to Paul and told him "the company are not letting anyone in today" and that he should have more

respect for his fellow workers than to try to go in and if he would go on home and stay, it would be to his benefit as well as ours.

Q. About how long did he stay there after you talked to him on that occasion, in your best judgment?

A. I will say somewhere around an hour.

Q. Somewhere around an hour?

A. Yes, sir.

Q. Did you observe Russell and Hovis from the time they started talking when you first observed him stopped until you went up?

A. Yes, sir.

Q. After you completed your conversation, what did you do and what did Hovis do or anybody else in the immediate vicinity?

A. Brother Starling came over and talked to him.

Q. Were you present when Starling talked to him?

A. I was standing back kindly back behind.

Q. Were you talking to Russell at the time Starling came over?

A. Yes, sir.

Q. Then you were standing back behind?

A. Yes, sir.

Q. You didn't hear that conversation?

A. No, sir.

Q. After Starling stopped talking to him, what happened?

A. He told us to come back and leave him sit there and we did.

Q. What did you all do?

A. We left the car and left him sitting there in it by himself.

Q. How long did he sit there after you left the car in your judgment?

A. Somewhere around an hour; thirty minutes or an hour.

Q. Then what happened?

A. He started his car up and turned around and taken back toward town.

[fol. 489] Q. Mr. Runager, on that occasion from the time Mr. Russell came up there that morning until he left on

that occasion, were you present there to where you could see his automobile at all times?

A. Yes, sir, most of the time.

Q. Where were you when you could not see it at all times?

A. Back behind some of the crowd part of the time.

Q. Walking around out in the crowd from time to time?

A. Yes, sir.

Q. Did you observe any one seizing or taking hold of the car that Russell was in there?

A. No, I didn't.

Q. Did Hovis seize the car?

A. No.

Q. Did anyone grab or take hold of the car in your presence on that occasion?

A. No.

Q. Anyone attempt to turn that automobile over?

A. No.

Q. Did you observe any boisterous or loud talking to Russell or back in the crowd on that occasion?

A. Yes, sir.

Q. Tell the jury about that, please, sir.

A. I heard someone back in the crowd say, "Turn him over", and somebody said, "Shut up."

Q. Do you know who said that, made either one of the statements?

A. No, I do not.

Q. Is it your judgment that the sound or words that you heard to the effect of "shut up" were made by the same or different party that said "turn him over"?

A. Made by a different party.

Q. Come from the same vicinity?

A. Yes, sir.

Q. Which direction from his car did it come from?

A. Came from the south.

Q. At that time were there a number of people over on the south shoulder or edge of Railroad Avenue there?

A. Yes, sir, quite a few.

Q. And in that number were there a number of women and children and non-union employees of that plant out there?

[fol. 490] A. Yes.

Q. Did you see any violence out there on that occasion?

A. No.

Q. Did you hear any other words spoken at or about the time you saw Mr. Russell down there that morning directed or that might have been directed towards him personally?

A. No.

Q. Did you hear any profane, obscene or vulgar language being used on that occasion there?

A. No, I didn't.

Q. Was any used in your presence on that occasion?

A. No, there wasn't.

Q. Did you know Burl McLemore at that time?

A. Yes, sir.

Q. Did you see Burl McLemore the morning of the 18th out there at the picket line or near the picket line?

A. Yes, sir.

Q. Did you see him before or after you saw Russell?

A. I saw him after I saw Russell.

Q. At the time you first saw Mr. McLemore on that occasion, was Russell out there?

A. Yes, sir.

Q. Where was Russell at that time?

A. He was sitting in his car.

Q. The car was parked at that time down there?

A. Yes, sir.

Q. Before or after you had talked to Russell that you saw McLemore?

A. That was after I talked to Russell.

Q. Where did you first see Burl McLemore on that occasion?

A. Well, he came down to the line in his car and pulled off in the road turning into the Alabama Flour Mill, the closest one to the picket line, approximately 10 or 15 feet from it.

Q. How close was it into the road from where Russell's car was parked on that occasion, in your judgment?

A. I would say it was approximately due north of Russell.

Q. Russell's car was parked about opposite the road that leads off to the flour mill?

A. Yes, sir.

Q. On the right or south side of the Railroad Avenue?
[fol. 491] A. Yes, sir.

Q. Your judgment is that the McLemore vehicle came down there about even with his and turned into the road leading to the flour mill?

A. Yes, sir.

Q. Who was driving that automobile on that occasion?

A. McLemore's?

Q. Yes, sir.

A. He was.

Q. What was the movement of the car with reference to the speed of the car at that time?

A. He pulled in there pretty fast and slammed on the brakes and jumped out with his lunch pail and told his boy, "Get over here and get it out of here. Quick."

Q. That was Burl McLemore?

A. Yes, sir.

Q. What did the car do then?

A. His boy slid over under the wheel, turned around and went back towards town.

Q. How far were you standing from McLemore when he got out of his car?

A. About 10 or 15 feet.

Q. Which side of Railroad Avenue were you on at that time?

A. I was on the north side.

Q. Immediately after McLemore got out of his car, what did he do and what did you do?

A. I went over and talked to Mack.

Q. Did you have a conversation with Burl McLemore?

A. Yes, sir, I did.

Q. Did you have a conversation with McLemore at any time on that or any other date after that while he was in the automobile?

A. No, he wasn't in his automobile.

Q. As soon as the automobile stopped, he got out and the car turned around and moved back west toward town?

A. Yes.

Q. Who was present at the time you talked to McLemore immediately after he got out of his car, if you know?

A. I don't remember who was there at the time.

Q. Tell the jury what you said to Mack and what he said to you.

A. Well, I told Mack that the company wasn't letting [fol. 492] any hourly rated employees in that morning, and that if he would go home and stay that the strike would soon be over and it would be for his benefit as well as ours, and Mack asked me then about going in and getting his cover-all's and I told him that the company wasn't letting anybody in and that I would see about that; that I would ask one of the representatives and call him later.

Q. What did he say to that?

A. "O.K."

Q. Then what did he do?

A. I didn't talk to him any more after that. He went on back towards town.

Q. When he said "o.k." after you told you would see a representative and call him about that, he walked down town and you didn't see him any more that day?

A. No.

Q. Did you at that time on that occasion make a statement to him in substance that "we are not letting any hourly paid employees in the plant today"?

A. No.

Q. Did you make any statement in substance of that?

A. I told Mack that the company are not letting any hourly rated employees in.

Q. Did you then and there on that occasion refuse to let him in or tell him he couldn't get in other than that statement?

A. No, I did not.

Q. Did you discuss the matter of his admission for the purpose you testified about with the representative after that?

A. Yes.

Q. Did you later that week have a conversation with Mr. McLemore by telephone?

A. Yes, I called Mack and told him he could come out

and pass through the picket line and get his cover-alls; that it was alright.

Q. Told him he could get his cover-alls?

A. Yes, sir.

Q. What did Mr. McLemore tell you with reference to getting his cover-alls, if anything?

A. He said that he would be out to get them.

Q. Be out to get them?

A. And he thanked me for calling him.

[fol. 493] Q. How long was that after July 18th that you called him?

A. I would say two or three days later.

Q. And on that same date you did call him, did you see him near the entrance of the plant or near the picket line?

A. Yes.

Q. After you called him?

A. Yes.

Q. At that time did he enter the gate down there and go into the plant?

A. Yes.

Q. Did he have a sore finger at that time?

A. Yes, said he wanted to go in and get his cover-alls and also to get his finger dressed.

Q. Was he admitted; he go into the plant?

A. Yes.

Q. Get his cover-alls?

A. Yes.

Cross examination.

By Mr. Wilkinson:

Q. When the committee, the union committee met the representatives of the company about three o'clock in the afternoon before the strike the following morning to discuss this alleged offer of standby men, who did the talking for the company?

A. Mr. Oakes.

Q. I will ask you if, in that conversation, Mr. Oakes did not inform your committee that the company was not going to import any outside labor to operate the plant?

A. Mr. Oakes informed us that if the picket line went up the next morning, that they would close the plant to all hourly rated employees.

Q. Did Oakes make the statement that the company was not going to bring in any outside labor to operate the plant if the plant was struck?

A. He didn't say anything about that. The only thing he said was that the gates would be closed to any hourly rated employees.

Q. Did he mention bringing in outside labor?

A. To Mr. Robson, yes. He asked Robson about those bricklayers who was building lean-tos at that time.

Q. I understood your testimony in substance was that Mr. Robson said the matter had already been attended to and the bricklayers were going to honor the picket line.
[fol. 494] A. I did.

Q. Did Oakes make the statement to your committee that if the plant was struck that the company would not bring in any outside labor to operate the plant?

A. No, he didn't make that statement.

HOWARD HOVIS, next witness in behalf of the defendants, being duly sworn, testified:

Direct examination.

By Mr. Adair:

Q. Your name Howard Hovis?

A. It is.

Q. Where do you live, Mr. Hovis?

A. I live at 401 Fifth Avenue Southwest here in Decatur.

Q. How long have you been living in Decatur?

A. All my life. I moved to Decatur when I was one year old.

Q. You a married man?

A. Yes, sir.

Q. Got children?

A. Yes, sir, I have a little boy and little girl.

Q. You own your home in Decatur?

A. I am buying it, yes, sir.

Q. Did you get that under a G.I. loan?

A. Yes, sir.

Q. Where did you work in Decatur prior to the war?

A. Prior to the war at the Southern Aviation.

Q. What was your next occupation after Southern Aviation?

Mr. Harris: We object to that as immaterial and irrelevant.

Mr. Adair: He is a defendant, Your Honor.

Court: At this time I don't see the relevancy, but I'll overrule it for the present.

Mr. Harris: We except.

A. I entered the armed forces of our country.

Q. What branch?

A. In the Air Force.

Q. Overseas?

A. Yes, sir.

Q. After serving in the armed forces, did you come back to Decatur?

A. Yes, sir, I did.

[fol. 495] Q. Where were you then employed?

A. My first position I believe was at Goodyear. I worked there only a short time. I didn't definitely know what I really wanted to enter into. I was still quite young; hadn't worked too much before entering into service. I hadn't definitely made up my mind.

Q. What kind of work were you doing at Goodyear?

A. I think it was classified "bailing"; I only stayed on the job for a very short time until I got enrolled in the Decatur Trade School.

Q. What course did you take at the Decatur Trade School?

A. Electricity. I had had previous training in electricity in the Air Force Radio School, electrical course.

Q. Electrical experience on the ground or connected with the planes in the air?

A. Both on the ground and in the plane; but I was one of the crew on a B-17 bomber in the Eighth Air Force in England.

Q. Mr. Hovis, did you go to this Trade School and take

your electrical course—were you working at that time?

A. I was going to school and working, too. School lasted six hours a day and I worked approximately four hours and on Saturday after school.

Q. Were you married at that time?

A. No, sir, I wasn't at that time.

Q. How long have you been married now?

A. I was married six years ago the 2nd of this month.

Q. At the time you married, where were you working?

A. At the Ingalls Ship Yard here in Decatur.

Q. As an electrician?

A. Yes, sir. We were wiring self-propelled barges to be sent to France to operate on the Rhine River.

Q. When did you first go to work with the copper plant?

A. I was among the first employees to enter the plant, I believe, on August 23, 1948.

Q. You were among the first hired out there?

A. Yes, sir, I was.

Q. What was you hired as, what classification?

A. I was hired as an electrician helper, but I was put on a shift by myself to maintain the entire plant; the only electrician on that shift.

Q. You were the only electrician on that shift. What shift?

A. 4 to 12 shift.

Q. Was the plaintiff, Paul Russell, working there at that time?

[fol. 496] A. Yes, sir, I believe he and I hired in the same day.

Q. He worked as an electrician also?

A. Yes, sir, he was in the electrical department, but our foreman told us the first day we hired in that he was going to take a man and train to be an instrument man and Paul Russell was the one selected to do the instrument work.

Q. What kind of work is that?

A. It is entirely different from maintenance electrician. It deals with charts and graphs and instruments to control different operation of equipment. See, on gas fired furnaces they have instruments that control the flow of gas through magnetic operated valves, and these same instruments are controlled under air pressure, too. I am

not an instrument electrician myself. I could not say exactly how it operates.

Q. How did that differ from your maintenance electrical work?

Mr. Harris: I cannot see the materiality of this. Seems we are wasting time on something that has nothing to do with the case.

Court: I don't see the connection. Lot of these I don't know about. What is this for?

Mr. Adair: I am about ready to leave this preliminary examination. I wanted to show that he and Paul Russell were together and knew each other and discussed these matters.

Q. How often did you see the plaintiff, Russell, out there?

A. Every day that we were both present at the plant; that is about five days a week.

Q. You all ever have conversations together?

A. Yes, we have had several conversations together.

Q. Besides the 18th of July, 1951?

A. I think we had conversations every day. In fact, I am sure we did because we worked together some.

Q. Mr. Hovis, do you recall when the organizational activities first started in the plant out there?

A. Yes, sir, but I wasn't interested in it when it first started.

Q. They had some kind of election back in 1949, didn't they?

A. Yes, sir.

Q. Same union involved?

A. Yes, sir.

Q. Did you take any part in the union activities at that time?

A. Not until right at the time of the election. Just a few, [fol. 497] I would say, couple of weeks before the election.

Q. You and Russell have conversations just prior to the election about the election?

A. The first election?

Q. Yes, sir.

A. Not that election.

Q. After the first election, I believe the result of the first election was that the union lost in the production and maintenance, the big units?

A. Yes, sir, and the electricians, millwrights, pipe fitters, carpenters and laborers—I believe that is all that was covered in the two units that did vote to have a union to represent them.

Q. The people you named voted for a union?

A. Yes, sir. In electricians I believe the count was ten for and two against. There was twelve of us, were twelve or fourteen. Two voted against the union.

Q. All the rest voted for it?

A. Yes, sir.

Q. Following that, do you recall another election that was held along the latter part of April, 1951 where everybody voted in the production and maintenance units?

A. Yes, sir.

Q. Lot of activity in the plant just prior to that election?

A. Yes, sir, lot of activity.

Q. Lot of discussion about it?

A. Very much so.

Q. During that period of time, did you and the plaintiff here, Paul Russell, have discussions about it?

A. Yes, sir, we had several discussions; I even invited him to the union hall.

Q. Did he go with you?

A. One time he and another witness that testified in this case for the plaintiff, Mr. Whitworth.

Q. Both did go?

A. Yes, sir.

Q. Did Russell express an opinion to you about whether or not you ought to have a union?

A. He didn't believe in the union the way I did. He seemed to think that a pat on the back and a smile from the foreman was good enough. He didn't seem to think [fol. 498] the workers had any right to be represented by bargaining agents.

Q. Did he talk to you at all about organizing an independent union?

A. Yes, sir, pretty well for a company union. He tried to get me to go along with him on that.

Q. He wanted to organize a company union?

A. Yes, sir.

Q. What did he tell you about that?

A. He told me in company unions you didn't have to bother with stewards. If you had a grievance, you could take it up with the foreman yourself as an individual and it would be straightened out there and they strictly went up on the job on the merits. You didn't have a union telling you whether you could get a raise or be promoted. If the boss liked you, he would promote you on up.

Q. Tell you whether he had had experience with that kind of organization?

A. Yes, sir, he told me he had been employed at an aircraft plant in California where they had a company union, and that it worked very smoothly and they didn't worry about coming out on a strike or anything like that.

Q. Did he express to you how the company union, how it bargained with the company if it did?

A. I don't think he told about bargaining with the company except as an individual.

Q. That was his opinion as he expressed it to you on the subject?

A. Yes, sir.

Q. After the election was held, I believe the testimony is that the union won the election by a majority of votes for an outside union?

A. Yes, sir.

Q. Did Russell continue to have conversations with you after that time?

A. Yes, sir, he did.

Q. What was the nature and substance of those?

A. Mostly we were still talking about the union. I never did give up hopes in Brother Russell. I thought we could persuade him to be on our side some day.

Q. Mr. Hovis, after the election was over out there in April, 1951, was there a negotiating committee formed to meet with the company and discuss these problems and try to work out a contract?

[fol. 499] A. Yes, sir, we met in the group, the whole membership. I believe it was one Saturday. I am not sure, but I think it was on Saturday; the whole membership that belonged to the UAW met and they elected five employees

of the plant to represent them and be part of the negotiating, temporary negotiating committee is what it was.

Q. Were you elected?

A. Yes, sir, I was one of them.

Q. What did the negotiating committee then do?

A. Well, in May we started having negotiations with the company along with Duncan. He was the spokesman for the union, and we met several different times in May and all though June and part of July trying to negotiate a contract.

Q. Did you have a number of meetings with the company?

A. Yes, sir, we had several.

Q. In those meetings who was spokesman for the company?

A. On every occasion, Mr. Oakes was the spokesman for the company.

Q. Is he one that made the proposal, the company proposals to the union?

A. Yes, sir.

Q. The union as I understand made certain proposals to the company?

A. That's right.

Q. Were alternative proposals discussed?

A. All proposals were discussed at length.

Q. Do you remember what the company's position was with reference to union security?

A. It was a flat no.

Q. Did the union propose any modified type of union security?

A. Voluntary check-off.

Q. What do you mean?

A. The employee has to fill out a form signing his name and badge number, etc., giving the company authority to deduct from his pay check the amount of dues per month.

Q. That was to be left up to the employee?

A. The individual himself. If he didn't want to sign, he didn't have to.

Q. Wasn't any compulsion that he had to sign?

A. No.

Q. In that connection, what was the company's reply to this voluntary check-off?

[fol. 500] A. I know it was "no", but I will see if I can remember the exact wording to it.

Q. Tell us if you remember the substance of it.

A. They still considered that we were trying to force the employees to join the union. I don't know how they got that, but I don't remember the exact reply, but it was "no".

Q. Amounted to "no"?

A. Yes, sir.

Q. Did you also have the problem of wages that were not agreed to?

A. Yes, sir, but with the plant here in Decatur, we were producing half again as much as the plant in Detroit and the plant in Detroit—

Mr. Wilkinson: We object and move to exclude that testimony and ask your Honor not to consider that.

Court: That is out.

Q. What was said about wages?

A. The company had offered a 6¢ raise, but there was from 5¢ to 45¢ difference in the wage pay than in Detroit per classification on the job.

Q. They offer to remove that differential and pay you Southern boys as much as the Northern boys?

Mr. Wilkinson: We object.

Court: Overruled. Whatever was proposed in the meeting ought to go in.

A. No, sir, the 6¢ proposal was all they ever offered when I was, in negotiations with the company on the contract issues.

Q. Prior to the strike?

A. Prior to the strike.

Q. About the question of arbitration.

A. The company again said a flat "no". It seems as though they didn't believe in democracy.

Mr. Wilkinson: We move to exclude that statement, and ask Your Honor that these improper statements not be considered.

Court: That is excluded.

Q. Just tell the jury what they said about the arbitration.

A. They said they would not stand for an outsider to come into the plant and tell them *out* to run it.

Q. That was their reply?

A. Yes, sir.

Q. Did they propose any method for settling grievances?

A. No, they wanted the last say-so, and the only action [fol. 501] that would be left for the union would be to strike if they didn't have arbitration.

Q. They never agreed to arbitration?

A. No, sir, wouldn't even listen to arbitration.

Q. About the proposition of having union stewards in various departments to act for the employees—how about that?

A. No, sir, they would not. They wanted to tell us, not some small group of men, but they wouldn't let us pick the stewards we wanted.

Q. How about leaves from work for union work, the local officials?

A. "No, sir", they could not be paying the employees while out on union activities.

Q. How about the question of a bulletin board to put up notices of meetings?

A. That was strictly out. They didn't like the word "union". Everytime it appeared, they would strike it out.

Mr. Wilkinson: We object; that's a conclusion of the witness.

Court: That is excluded.

Q. Mr. Hovis, at the time, on July 17th, as I understand, this committee had met on numerous occasions with management?

A. Yes, sir.

Q. On that date the status of negotiations was about as you have outlined?

A. Still didn't have a contract.

Q. Was anything done on July 17th to bring the membership up on the status?

A. Yes, sir, we had a meeting at one o'clock at the union hall. I believe the address is 618½ Second Avenue; if not, it's up there right across where the old Penney store used

to be upstairs. That meeting consisted of the employees at Wolverine on the second shift.

Q. What time of day you say you had that meeting?

A. One p.m.

Q. Were you there as a member of the temporary negotiating committee?

A. Yes, sir.

Q. Was it part of the committee's function there that day at that time to report to this meeting?

A. Yes, sir, it was; that was one of the, I guess the purpose of the meeting was to bring the membership up to date on how the negotiations were and to either accept or reject all the proposals or so called proposed contract that the company had offered.

Q. Were you working on the day shift on that day?

[fol. 502] A. Yes, sir, on the day shift.

Q. How did you get up to the meeting?

A. Drove my own car.

Q. Did you take off from work?

A. I checked out at noon if I'm not mistaken.

Q. When you got to the meeting and the people assembled, you have any estimation as to the number of employees there in that meeting?

A. I would say over 100.

Q. At the one o'clock meeting?

A. Yes, sir.

Q. What took place at the meeting?

A. I think Mr. Duncan opened the meeting, and he had gone down the contract that we had proposed to the company and the company had refused check-off, arbitration, increase in wages, etc. I believe it was 18 different items that the company had refused to even talk about.

Court: How many?

Witness: 18.

A. Then he come back with what the company had offered us which wasn't very much and then let each one take the floor and express our opinion on the negotiations, and after each member on the negotiating committee had expressed personally his opinion, practically the same thing, and stated that the contract wasn't good enough, a motion was

made on the floor that we turn the contract down and it was very little discussion on this issue because most of the employees knew that we couldn't work at the plant with a contract like that.

Mr. Harris: We move to exclude that statement, "because the employees knew that we couldn't work with a contract like that"; irrelevant, incompetent, immaterial; invades the province of the jury.

Court: Sustained.

Q. Tell us what was done, Mr. Hovis.

A. So they voted the proposed contract down. And then a motion was put on the floor to strike the plant on July 18th and it was some discussion on this and a vote was taken and it was unanimous to strike the plant on July 18th. Then Mr. Starling took the floor and told us that by all means that the picketing—if it was so that the first and third shift on the following meeting voted the same as we did—that the picketing at the plant would be positively—would be peacefully and orderly, and there would be positively no drinking allowed. Everything carried on in an [fol. 503] orderly manner. I believe that was about the conclusion of the first meeting.

Q. What did the committee do then, if anything, Mr. Hovis?

A. Mr. Duncan called Mr. Oakes out at the plant and talked to him and told him we would like to meet him.

Q. Was a meeting arranged?

A. Yes, sir, we went out to the plant.

Q. What time of day?

A. That was about three o'clock in the afternoon.

Q. Who was there for the company?

A. Mr. Oakes, Mr. Robson and Mr. Kromer.

Q. Who was there for the union?

A. Mr. Duncan, Pete Runager, Olan Drake, Norman Ange, Clyde Bradshaw and myself.

Q. What took place at that meeting?

A. Mr. Duncan advised or told Mr. Oakes the action that had taken place in the meeting of the second shift, and that in the previous meeting with the first and third shift, he believed that they would vote also to strike the plant the

following morning and that he was there to offer standby men for any protection of equipment that needed attention; that he would let any reasonable number of employees come in and take care of that job.

Q. What did Oakes tell you?

A. Oakes thanked him and said, "I believe you are sincere in this, Mr. Duncan. We appreciate it. But our salaried personnel is quite capable of handling any situation that might arise and we are going to close the plant to all hourly rated employees. After all, this thing will be over one day and all be back in here working together again, and when all the men come back, we don't want hard feelings between them, so we're just going to close the plant down for the duration of the strike."

Q. Mr. Robson say anything?

A. Yes. Mr. Oakes says, "Paul, how about the lean-to out here?" Mr. Robson said, "I have already spoken to those men and they are union men and they won't cross the picket line."

Q. The men working on the lean-to's, they were not employees of the company?

A. No, from an outside contractor. I don't know what firm or company.

Q. After that meeting with Oakes was concluded, what did the committee then do?

A. We went outside and just as I got outside the door at [fol. 504] the conference room, I saw Ralph Webster.

Q. Is that the defendant here (indicating)?

A. Yes, sir.

Q. Where did you see him when you stepped out the door?

A. On the north side of the gate house. I don't know what that is called, a "canopy" or "marquee"; in the truck.

Q. In a truck?

A. Yes, sir.

Q. Anybody in the truck with him?

A. Paul Russell.

Q. The plaintiff?

A. Yes, sir.

Q. Sitting there with the defendant, Ralph Webster?

A. Correct.

Q. In the truck?

A. Yes, sir.

Q. At the time you walked off from talking to Oakes?

A. Yes, sir.

Q. What, if anything, did you do?

A. Ralph saw me about the same time I did him. He came over and wanted to know what was going on. I told him that the second shift voted to strike and I had reason, along with all the rest of the committee, that the first and third shift would too and we had advised Oakes there would be a picket line on the morning of July 18th, and we had offered standby men and that he told us the plant would be shut down, no hourly rated employees would be allowed; that the supervisors was capable of handling any situation that might arise.

Q. Did you see where Webster went at the conclusion of the conversation with him?

A. Back over to the truck.

Q. Was the plaintiff, Paul Russell, still in the truck?

A. Yes, sir.

Q. Did the defendant, Ralph Webster, get in the truck with the plaintiff, Paul Russell?

A. Yes, sir.

Q. In your presence?

A. Yes, sir, I saw him go over and he walked around the truck and got in on the driver's side.

Q. Webster got in on the driver's side?

[fol. 505] A. Yes, sir.

Q. Did Webster tell you he and Paul Russell were working on a job at the gate together?

A. Yes, sir.

Q. What did you do then?

A. I went on to the union hall and made preparations for the meeting of the first and third shifts.

Q. What did you do when you got back to the hall?

A. Wasn't but just a little while after we got there that the meeting was under way.

Q. At the meeting at 4:30?

A. Yes, sir, 4:30, between 4 and 4:30, immediately after the first shift got off from work.

Q. Who was supposed to be at that meeting?

A. First and third shifts.

Q. Is that a larger group, the first and third, larger than the second shift?

A. Yes, sir.

Q. Was the union hall crowded or just a few folks in there?

A. As far as I could see, which was all the way back out the door and down the hall leading down the stairs, was stacked full.

Q. Lot standing up?

A. Yes, sir.

Q. You have any estimation as to how many were in there?

A. Just from what I could see looked to me around 300.

Q. Jammed in there?

A. Yes, sir.

Q. What took place at that meeting?

A. Again Mr. Duncan and the temporary negotiating committee related to the membership the progress that had been made, and Mr. Duncan told the membership of the meeting between management and the committee where Mr. Oakes told him that the plant would be closed to all hourly rated employees; that the salaried men could handle it and he didn't want hard feelings among the employees after the strike was over, so he was going to close the gates and after that we held a vote whether to accept or reject the contract.

Q. How did this group vote?

A. Without any discussion at all, they voted down 100%.

Q. Contract was voted down?

A. Yes, sir. There was put on the floor a vote to strike [fol. 506] the plant the next morning, and it was carried unanimously.

Q. After that, what happened?

A. Mr. Starling took the floor and related again that the picketing had to be peacefully and orderly, and that there would be no drinking allowed. We were to abide by all laws and everything, and he urged that all the employees be at the plant site around the front gate the next morning between six and seven o'clock; that it would be there where we would find out what shifts we were to be on to picket

and what times to picket, etc., a roster would be set up for picket duty.

Q. Did you go out in the vicinity of the plant the following morning?

A. Yes, sir.

Q. What time did you get out there?

A. I believe I got there about six o'clock.

Q. When you got there, was other people already there?

A. One or maybe two or three cars when I arrived.

Q. Not very many?

A. No.

Q. After you got there, other people and cars arrived?

A. Yes, sir.

Q. What did you do out there after you got there at six o'clock?

A. Well, one of the first things I done was immediately start making a roster for picket duty.

Q. Roster?

A. Yes, sir.

Q. Explain what you mean by roster.

A. Put down the name and address and phone number, and what shift the employee was to picket on; what shift or where they lived and phone number and also the preference to what shift they wanted to work.

Q. Did you have a pad or paper there to do that on?

A. Yes, sir.

Q. You did that by personal interview?

A. Mostly.

Q. Everybody was told to come their names, addresses, etc. could be taken and interviewed as to when they were available to picket.

A. Yes, sir. Some lived at Cullman, some Mt. Hope, and we had to get it arranged so each individual would not have to drive that far to come down for one day's picketing. We organized it so they could have a pool of rides. [fol. 507] Q. Pool of rides?

A. Yes, sir, they could picket the same day and be off the same day.

Q. How did you assemble that information?

A. It took about four days or longer to get all straightened out. Most of it was from personal contact or

would contact one and he would say "so and so lives over here by me. Put us together."

Q. On that morning of July 18, 1951, were most everybody you saw in that meeting the day before, those two meetings, did they show up there?

A. They must have and a whole lot more, possibly.

Q. During that time did you get to talk to all of them on July 18th?

A. No, sir, not near all of them.

Q. How many days did you take to complete your interviews and get the picket roster?

A. Four days or more, because I stayed up until two and three o'clock working on it.

Q. Did you finally get it set up?

A. I got something set up. I wouldn't guarantee how good it was. I got a roster made out.

Q. After it was completed and made out, did a large group of people still come out every day?

A. No, sir, they didn't. After we got the roster made, the pickets were cut down from three, four or five men walking at a time, and I know on the day shift we had a whole lot more walking the picket line than the second or third, and some wouldn't have to picket but one day and wouldn't have to be there any more for two or three days. If any had a half way excuse that they didn't want to be there, they were excused because we had plenty of people to picket. I know some of the boys had farms and several were excused to bale hay, etc., like that, to conduct their farm as well as walk picket duty.

Q. How many other people, to you knowledge, how many other employees were engaged as you were on the 18th of July trying to work out this picket schedule?

A. On the 18th day of July?

Q. Yes, sir.

A. Ralph Webster was to help me; Norman Ange, Clyde Bradshaw, Carl Bradshaw, Joe Clark, Carl Montgomery; we had several picket captains.

Q. Each one of the captains assisted in interviewing the people out there, finding out what preference they had and scheduling them?

A. Yes, sir.

[fol. 508] A. Yes, sir.

Q. And arranging for car pools and rides?

A. Yes, sir.

Q. Do you recall the police coming out on the morning of July 18th and giving any instructions?

A. Yes, sir, I do. Carman Taylor was driving the car.

Q. Who is Carman Taylor?

A. He had been employed at Wolverine shortly before in the casting shop. I've been knowing him quite a number of years and knew him in the plant.

Q. Was he a City Officer at that time?

A. Yes, sir.

Q. Did he come in a police car out to the plant?

A. Yes, sir, he did. He was accompanied by the Mayor and I believe the Chief of Police in the car.

Q. Do you know about what time of morning that was, Mr. Hovis?

A. I believe it was before any salaried employees entered the plant, came down to the plant.

Q. You believe it was before the salaried employees entered the plant?

A. Yes, sir, I do.

Q. Did this policeman, Mayor or Chief of Police give any instruction on that occasion?

A. They said they wasn't out to interfere with the strike; that we had a perfect right to strike, but they did request the street to be kept open because of fire hazards.

Q. Did you take any action with reference to that request of the police?

A. We assured him we would do everything in our power to keep the street open.

Q. Do you know whether or not men were assigned to that duty at that time?

A. Yes, sir, Ralph Webster was assigned to that main duty.

Q. The defendant sitting here?

A. Yes, sir.

Q. How did he go about getting or carrying out that assignment?

A. He was sent down or decided that the proper or best place to intercept the cars would be where they could turn around or park and the best place in his judgment, or some-

one who advised him, was the intersection of Railroad [fol. 509] Avenue and Grant Street coming out by—I don't know the name of the street—by the Goodyear.

Q. A good long distance from the picket line?

A. Yes, sir.

Q. You know whether or not Mr. Webster went down to that vicinity?

A. I don't know that he did. I didn't see him. He said he was going.

Q. What were you doing during that time?

A. I was still at the picket line trying to get the roster straight. I was walking around among the pickets getting names and addresses, and the side of the railroad track in the immediate vicinity of the picket line.

Q: Mr. Hovis, you knew Mr. Oakes from your many meetings with him there and working with him?

A. Yes, sir.

Q. You saw him very often, did you?

A. Yes, sir.

Q. Did you see Oakes out there in the vicinity of the picket line on that morning?

A. Yes, sir, I did. Mr. Oakes came in about 7:30, I believe, and he called for Mr. Duncan and I was close by Duncan so I just walked over with him. Of course, I was interested in the strike as much as anyone else, maybe a little more, and Oakes congratulated us on the way we had conducted the strike and told us that everything was very orderly. "I forgot to tell you something yesterday."

Q. Said, "I forgot to tell you something yesterday"?

A. Yes, sir, and he reached in his billfold and pulled out a card. "This is the way you can identify salaried personnel with this card. There is a picture there and also a number. They will have a badge, too, and the badge number and the I.D. card number will correspond and the number ranges from two to four thousand, and you can identify the salaried personnel by this."

Q. Was that word then passed to the other people?

A. Yes, sir, it was.

Q. Do you recall your fellow-worker there, Paul Russell, coming up to or in the vicinity of the picket line on that occasion?

A. On July 18th?

Q. Yes, sir.

A. Yes, sir, I do.

Q. Will you tell us, the jury and the court, just what occurred; what you saw?

[fol. 510] A. The first time I saw Paul I was standing at the end of the picket line with a pad and a pencil. Paul was stopped. I don't know how far, but it looked to me like 30 feet from the picket line, and I walked over to him and started talking to him, and I asked him to respect the picket line and told him that the plant was closed to hourly rated employees and I told him of Oakes having just gone by a few minutes before that and telling us how we could identify the salaried personnel, and I had my arm in the window. Paul had the motor running on the car—must have been in low gear when he pulled in—and, well, I don't know whether he took off a little fast or not, but he let out on the clutch and mashed on the accelerator some and the position I was in, when he moved I kinda fell and grabbed at the car door to keep from falling. He didn't go but just a short ways and stopped again.

Q. You still have a hold of the car?

A. Yes, sir.

Q. How far would you say he moved in your position, in your best estimation?

A. Not but about 15 feet, I think.

Q. What was said then?

A. I tried to get Paul to join the union again. I told him what we were on strike for and I told him he would receive every benefit we did after the strike was settled and we got back in there, and I never did give up hopes on him.

Q. How long did you talk to him?

A. About ten minutes.

Q. You tell him at that time that he couldn't get through the picket line?

A. No, sir, I asked him to respect the picket line.

Q. You say you had already told him when he first stopped that the plant was closed to Hourly employees?

A. Yes, sir.

Q. You told him Oakes had just been through and told you a man had to have a certain kind of card to get in the plant.

Mr. Wilkinson: We object; that's repetitious.

Court: Don't repeat.

Q. Is it or not true that at the time Paul Russell came up to the picket line, you were standing even with the Alabama Flour Mill's first entrance and was signalling people to stop?

A. No, sir, it is not.

[fol. 511] Q. Is it or not true you had talked to Paul Russell while you were standing there before he started up and you were drug?

A. Yes, I had. I was trying to explain to him he would receive the same benefits we would and his job was protected as much as ours as long as the picket line was up, and the company had the gates close anyhow.

Q. Is it or not true that you stood and shook your fist at him?

A. I did not.

Q. Do you know anything about the picket signs?

a. Yes, sir, I helped stick a few together. We made those signs after the meeting on July 17th. I think part were made about 5:30, between 5:30 and 6:30 on the morning of July 18th.

Q. Were those signs fastened on 2 x 2's?

A. They were not.

Q. What were they fastened on?

A. Fastened to lath wood about $\frac{1}{4}$ inch thick and maybe $1\frac{1}{2}$ to 2 inches wide, and they had pasteboard placards which had been printed or printed by one of the members of our union.

Q. Your testimony is that they were not 2 x 2's? The boards?

A. That's right.

Q. Mr. Hovis, you were here in the court room and heard Mr. McLemore's testimony?

A. Yes, sir, I did.

Q. Did you or did you not tell Mr. McLemore that he could go in to get his cover-alls alone if he promised not to work?

A. I did not.

Q. Did you or did you not grab at the handle of McLemore's car?

A. I did not.

Q. Did you grab his windshield?

A. No, sir, I did not.

Q. You recall talking to McLemore?

A. I don't believe I said a word to Mack. I was on the opposite side of the street from him the first time I saw him. He was getting out of his car and it was the opposite side of the steering wheel, and I walked over that way, but I don't even believe I said anything to Burl McLemore.

Q. You deny that you grabbed his handle?

A. Yes, sir. I didn't get close to his car I know.

Q. Did you see anybody grab his windshield?

A. No.

[fol. 512] Q. Did you see any people mass around his car?

A. I saw Pete Runager talking to him; I didn't see any mass of people.

Q. Saw Runager talking to him?

A. Yes, sir.

Q. Were you out on the picket line up to and before 15 of 8 A. M. on August 22, 1951?

A. Up to and what?

Q. Were you on the picket line at or around 15 of 8 on August 22, 1951?

A. A. M.?

Q. Yes, sir.

A. No, sir, I wasn't.

Q. Were you out there when the so-called caravan went into the plant?

A. No, sir, I wasn't.

Q. You were not there?

A. No, sir.

Cross examination.

By Mr. Harris:

Q. Mr. Hovis, was it not one of your purposes in being out there in the vicinity of the entrance to this plant on the morning of July 18th and picketing the plant there, to admit salaried employees of the plant and to keep hourly rated employees of the plant from going into it?

A. No, sir, it wasn't.

Q. I notice you all have not mentioned Mr. Volk as being in the meeting with the company officials on the 17th day of July about 2:30 or 3 o'clock in the afternoon.

A. He wasn't there.

Q. Mr. Volk wasn't there?

A. No, sir, not at the meeting of the company.

Q. You positive of that?

A. I am positive.

Q. Was he at the union meeting at one o'clock?

A. Yes, sir, he was at the union meeting.

Q. But didn't go to the plant with you?

A. No, sir.

Q. And wasn't among your committee that talked to Robinson and Oakes and Mr. Kromer?

A. Not on the afternoon of July 17th.

Q. That is the day before the strike?

[fol. 513] A. That is the day before the strike.

Q. You mentioned there was an election out there and that the union got the majority of the votes. What percentage of the votes did the union get?

A. On the last election?

Q. Yes, sir.

A. The engineering section wasn't allowed to vote so that cut down a hundred men, and the union, out of production and maintenance, got 51½%; I will say it was that close.

Q. Your feeling toward this plaintiff isn't good?

A. How would you feel if somebody sued you for \$50,000.00?

Q. I didn't ask that.

Court: Just answer the question.

Witness: At present?

Q. Yes.

A. Not too good.

Q. And as a matter of fact, it has not been good ever since you and he started having arguments about the union, has it?

A. I couldn't say that. I think Paul and I got along about as well as he and any other electrician in the group, and I thought as much of him up until he sued me

and he got the back to work movement to going as I did anyone else in the department.

Q. Your feeling wasn't good on the 18th of July, 1951?

A. Yes, sir.

Q. It was?

A. I didn't have anything against him. Why should I feel otherwise?

Q. You were present at a hearing before the National Labor Relations Board on May 12 of this year, were you not?

A. I believe it was May 12th.

Q. About a month ago?

A. Yes, sir.

Q. You were there that day from ten until six-thirty that afternoon?

A. Yes, sir.

Q. You heard Paul Russell testify there, didn't you?

A. Yes, sir.

Q. You testified there?

A. Yes, sir.

Q. You were sitting right by me while he was testifying, were you?

A. Yes, sir.

[fol. 514]. Q. When Paul Russell was testifying he made some reference to the cries of "Turn him over" while out on the picket line that morning, didn't he?

A. Yes, sir.

Q. When he did that, tell the jury if you didn't say—

Mr. Adair: I would like to interpose an objection. I want the objection right here.

Mr. Harris: I insist on my right to finish.

Mr. Adair: The objection is—

Mr. Harris: Just a minute. If you want to exclude the jury—

Mr. Adair: I didn't ask to exclude the jury.

Court: Let him ask the question and then I will rule. Either that, or I will exclude the jury.

Mr. Harris: I don't want it that way unless you do.

(Jury is taken out of court room.)

Q. —if you didn't say, "He ought to be turned over"?

Mr. Adair: I object to that. He says that this man said that in an undertone sitting by him in another case on May 12th, 1953, just a few weeks ago. Whether or not this man had malice after a \$50,000.00 suit is filed is immaterial to this case and certainly doesn't show malice in January or July, 1951. Any side remark made two weeks ago isn't admissible and even stating that in the presence of the jury would be highly prejudicial.

Mr. Harris: I intend to go further than that, if your Honor please. In answer to my question, "Did he say in an undertone, 'He ought to be turned over', his answer was, 'I did and I still say he should'." Page 254 and 255.

Court: Here would be the ground of admissibility and that is the tendency to show his animus toward the plaintiff at that or this time and that goes to the weight that they will give his testimony.

Mr. Adair: We will take exception because his animus has nothing to do with malice on the 18th day of July, 1951.

(Jury returned to jury box.)

Q. When Mr. Russell, at this hearing approximately a month ago, was making reference to the cry of "Turn him over", I will ask you if you didn't say "in an undertone, 'He ought to be turned over'!"

[fol. 515] Mr. Adair: I object, because any statement that this witness may have made a month ago would certainly not show whether or not he bore malice toward Paul Russell on July 18, 1951. A month ago, such statement was after the law suit was filed against him, and immaterial to this issue.

Court: The court doesn't allow it on the theory that it shows his animus in July, 1951, but it does tend to show what the nature of his feelings were then a few weeks ago and goes to the jury for the purpose of being considered by the jury in determining whether or what weight they will give his evidence.

Mr. Adair: We except.

A. Well, I said it but I didn't mean it.

Mr. Harris: We move to exclude the statement that he didn't mean it.

Court: Sustained.

Mr. Adair: We except.

A. Yes, sir, I said it.

Q. When I asked you on that hearing if you didn't say that in an undertone, wasn't your answer, under oath, "I did and I still say he should"?

A. I said it then.

Re-direct examination.

By Mr. Adair:

Q. In this hearing that Mr. Harris is questioning you about a couple of weeks ago, were you sitting next to Norman Harris?

A. Yes, sir.

Q. And were you sitting next to him when this statement that he refers to was made?

A. Very close to him.

Q. In the next seat?

A. Yes, sir.

Q. Closer to him than to me, were you not?

A. Yes, sir; I was. No one could have heard that.

Q. This undertone statement you made there, you were not on the stand at that time?

A. No, sir.

Q. Paul Russell was on the stand, wasn't he?

A. Yes, sir, he was.

[fol. 516] Q. Did you make any move to try to turn Paul Russell over on July 18, 1951?

Mr. Wilkinson: We object; repetitious.

Court: I don't know whether that was brought out on direct examination or not.

Q. Did you make any move to turn him over?

A. No, sir, I didn't, but looks like he was trying to run over me.

Q. Did you see anybody try to turn him over?

A. No, sir.

- Q. Did anybody turn him over?
A. No, sir.
Q. Was he bothered in any way?
A. No, sir, not in any way.
Q. Did you see anybody hit him?
A. No, sir.
Q. Did you see anybody pull at him?
A. No, sir.
Q. Hit his car with sticks?
A. No one molested, hit or struck him.
Q. At this hearing you were in a couple of weeks ago, at that time Paul Russell had already sued you for \$50,000.00?
A. Yes, sir, and I didn't like it either.

M. E. DUNCAN, next witness for the defendants, being duly sworn to speak the truth, testified:

Direct examination.

By Mr. Adair:

- Q. Will you state your name to the court and the jury?
A. M. E. Duncan.
Q. Mr. Duncan, where do you live?
A. In Atlanta, Georgia.
Q. You ever lived in Alabama?
A. Never have.
Q. Where were you born?
A. In Hart County, Georgia, Rossville, Georgia, Route #2.
Q. On the farm?
A. It is.
Q. You raised on the farm?
A. I was.
[fol. 517] Q. Where did you move from when you left the farm; where did you move?
A. Atlanta, Georgia.
Q. What kind of work did you go in there?
A. Grocery store; Roger's Grocery Company.
Q. You a clerk?

A. That's right.

Q. How long did you work there?

A. About 6 or 7 years, I believe it was.

Q. Did you go to work then in an automobile plant?

A. I did.

Q. Where was that?

A. Chevrolet Motor Company, Atlanta.

Q. What was the nature of the work you did in there?

A. Assembly work.

Q. Was you on the assembly line?

A. Part of the time I worked on the line and part of the time on the press on the side of the line.

Q. What did you do with the press?

A. Putting in bushings in the rear springs and put graphite grease on a cloth and fastened it on there with an air hammer.

Q. You worked in both places?

A. That's right.

Q. How long were you in the first place there? I mean Chevrolet place?

A. From November, 1933 until November, 1943.

Q. Ten years?

A. That's right.

Q. While in the plant there, did you join the UAW union?

A. I did.

Q. What year was that, if you recall?

A. 1935.

Q. When you left the plant in 1943, where did you go?

A. To work for the International Union.

Q. Had you been officer of the local union in the plant?

A. Chairman of the Shop Committee.

Q. What were your duties in that connection?

A. Handled grievances with the foremen and superintendents and also with management in shop committee meetings.

[fol. 518]. Q. When you went to work for the International Union, what kind of work did you do?

A. Servicing the plants, working with shop committees on grievances and also making contracts and some organizing.

Q. Are you still working for the International Union,
UAW?

A. No.

Q. What are you doing now?

A. After this hearing is over with, will probably go back
in the Chevrolet plant where my seniority is.

Q. Were you Assistant Director of this region 8 at the
time the strike occurred in Decatur?

A. I was.

Q. Does the Regional Director select his own assistants?

A. He do.

Q. You are not working for the union at present?

A. That's right.

Q. You maintained your seniority in the plant while you
were working for the union?

A. That's right.

Q. You are going into the plant now?

A. That's right.

Q. Mr. Duncan, were you assistant Regional Director
at the time the election was held in April, 1951 over here
at the copper plant?

A. I was.

Q. After that election was held and the majority voted
for the union to represent them in bargaining, did you
handle the commencement and progress of the negotiations?

A. I did.

Q. Tell us what you did in that connection.

A. After we received certification, I met with the tempo-
rary negotiating committee that had been elected by the
members.

Q. That over here?

A. Yes, sir, that's right. We worked up a contract pro-
posal to present to management. Then we got a meeting
and went in and started trying to negotiate a contract.
We met, the first meeting was on May 21, 1951 and we
met off and on each week and some weeks two times; I
believe one week one and some weeks three or four times
until the week of July 17th.

Q. You don't know how many meetings in all?

A. I don't know.

[fol. 519] Q. You had had many?

A. Yes, several meetings.

Q. Was the committee, the employees, the local employees, were they always with you when you met?

A. They were.

Q. Who did the speaking for the company in the meetings?

A. Frank W. Oakes.

Q. Oakes?

A. Yes, sir.

Q. Were you all able to arrive at an agreement? The union committee and the company come to an agreement?

A. No.

Q. Do you remember what the major issues were, the points separating the parties?

A. The major issue was arbitration in the grievance procedure which is the way to settle grievances. If there is a dispute between management and the union and you can't agree, you take it to the arbitrator and have your case and let that man make the decision. That was one of the main issue. Another was wages, and another was union security, and then there was another, equalization of overtime, the bulletin board, and how an employee would be laid off in case of a lay off in the plant, and regarding supervision work, whether that was work on hourly rated work or not, and there was a few other items I can't recall at the present time.

Q. Was that the situation on the 17th of July, 1951?

A. It was.

Q. Was the union meeting called for one o'clock on that day?

A. It was.

Q. You recall who was in attendance at that meeting?

A. There was second shift employees who were due to go to work around four or four-thirty.

Q. What was the purpose of that meeting?

A. To report on the progress of negotiations.

Q. Did you attend that meeting?

A. I did.

Q. You know how many people were there?

A. I didn't count them but from the looks of the crowd, I would say better than a hundred there.

Q. That meeting held here in Decatur, was it not?

A. That's right; up on Second Avenue.

[fol. 520] Q. About what time of day?

A. About one o'clock in the afternoon.

Q. Did you talk to the folks in that meeting?

A. I did.

Q. Will you tell us just what you told them or said to them?

A. I made a report to them on the progress of the negotiations, what managements had offered and what they said they would give and what they said they would not give, and told them the contract liked a whole lot of being the type of contract that UAW desired and it was going to be left up to them; they could vote to accept or reject it, but I wasn't recommending that they accept it and I wasn't recommending that they turn it down.

Q. You state you told them that you would not recommend that they accept it or would not recommend that they reject it. Is that correct?

A. That's right.

Q. You told them you were leaving it up to them?

A. Right.

Q. What happened then?

A. They turned it down and I believe it was unanimous.

Q. Then what took place?

A. Then I told them that since they turned it down that we had got—I was certain we had got all we would be able to get out of management, and there wasn't but one other step to take and it was up to them what they did. A motion was made that they shut the plant down the next morning at 8 and it passed.

Q. You recommend that they do that?

A. I did not.

Q. The motion passed?

A. It did.

Q. You know how many voted in favor of it?

A. It was all of them in there to my knowledge.

Q. What took place then?

A. After the meeting adjourned, I called Mr. Oakes out at the plant and asked him for a meeting between the committee and his committee, and the committee and my-

self went out and it was around three o'clock, and we told them what had expired on the second shift meeting and we told them we were satisfied that the next shift, which would be the first and third shifts, they would have a meeting after they got off the shift, would vote like that shift had, and in case they did, there would be a [fol. 521] picket line in front of the plant the next morning, and we was out there to offer to work out a certain number of people that maybe would be needed for the protection of the equipment in case a transformer went out or fire or certain types of maintenance that needs standby people all the time, and we told them we were out there for the purpose of working that out. Mr. Oakes said he appreciated that but their supervisors was trained and perfectly capable of handling anything that might arise and they would look after that; that the plant would be closed to all hourly rated employees; would not be any hourly rated employees in the plant. He said the reason they didn't want to try to operate was that if they let some people come in to work and pass the picket line, it might cause a argument between the two groups and that some day the strike would be settled in case it come off, and they wanted all the people to work together and not have hard feelings against each other.

Q. Who else was at that meeting for the company?

A. Representing the company was Oakes and Mr. Kromer and Robson.

Q. Kromer and Robson—either one have anything to say that you remember?

A. Mr. Oakes turned to—after he made that statement to us—he turned to Kromer and said, "Isn't that right?" He said, "Yes." He turned to Robson and there was some construction work going on at the plant. "What about those people who are working who didn't belong to our union?" Mr. Robson told him he had discussed that with them and they belonged to the union and they would not cross the picket line and they would not be coming in the plant in case the picket line was put up.

Q. What did you do after that meeting?

A. Returned back to the union office on Second Avenue.

Q. Was another union meeting to begin then?

A. There was.

Q. About 4:30?

A. Around about 4:30.

Q. Do you have any idea how many people were there?

A. The whole room was running over and there was people standing on back down on some of the steps. I would say there was 250 or better in that meeting.

Q. What took place at that meeting?

A. We went through the same procedure as to the first meeting. I reported on the progress of the negotiations; told the people that I wasn't recommending that they turn it down or recommending to accept it. It was up to them. They turned it down, and I told them since they had turned [fol. 522] the contract down, I didn't believe there was any need of going back to try to negotiate further. We had been told by the company that was all they were going to give, and there wasn't but one other step and that would be to put up a picket line. They would have to vote on that. I wasn't recommending that they put it up. There was a motion made and it passed, to my knowledge, unanimous to put the picket line up the next morning at 8 o'clock.

Q. Were any instructions issued by about who was to be at the picket line the next morning after that passed?

A. Yes.

Q. What were they?

A. That everybody should be out there for the purpose, so we could be able to get all the people's names and addresses and find out what shift they would like to picket in order to get the picket line set up.

Q. Have you been in other strikes, Mr. Duncan?

A. I have.

Q. Is that customary?

A. It has been.

Q. Is that the manner you ordinarily organize your picket shifts?

A. It has been in the ones I have been in.

Q. Is that a big job or a little job?

A. A big job. You have got to get all the people's names, find out where they live and you need to try to get them grouped together to where you can get a group on the

same shift where they can ride together. It is a big job and takes usually two or three, four days to get set up.

Q. You know how long you took out here?

A. Around two or three days.

Q. You know whether or not there were several people working on that that morning?

A. There was.

Q. Some of the people were called picket captains?

A. That's right.

Q. Any instruction about the manner in which the picketing would be conducted?

A. Yes; instruction was given for it to be orderly, peaceful and to not have any weapons nor any whiskey and not to come to the picket line drinking, nor have any other there.

Q. Were you out there the next morning?

A. I was.

[fol. 523] Q. What time did you get out there?

A. About six o'clock.

Q. Were there a great many that came out there that following morning?

A. A good many.

Q. Picket captains selected?

A. Yes, sir.

Q. Did they go about interviewing and taking down names and addresses of these people?

A. They did.

Q. Did they find out where they lived?

A. They did.

Q. Did they talk to them about who might be able to ride with whom?

A. That's right.

Q. Did they work out what shift they would picket on?

A. They worked on it that day. It took two or three days to get it completed.

Q. Didn't get it all done that day?

A. No.

Q. The people who actually walked in the circle was the ones who volunteered while out there?

Mr. Wilkinson: We object, leading and suggestive.

Q. I will ask you, Mr. Duncan, how it was determined who was to walk the picket line on the first morning?

A. I think the way we first set it up, so many, a group of certain people volunteered to walk and every so often another group would replace that one.

Q. Wasn't any regular schedule to that on the first morning?

A. No, sir.

Q. Did you observe the conduct of the picketing on that first morning?

A. I did.

Q. Did you see any violence?

A. No.

Q. Were you out there—you say you got there about six o'clock?

A. Yes.

Q. Did any official of management or of the company contact you while you were on the picket line?

A. Yes, sir.

Q. Who was that?

[fol. 524] A. Frank W. Oakes.

Q. He the same man that told you the plant was going to be closed the afternoon before?

A. That's right.

Q. Where did he contact you?

A. He come down the line, the road, before 7:30 and stopped. I was over to the right toward the railroad with a group standing over there talking. He called for me and I called to Hoyt Grizzard to come go with me. I spoke to him. He said he appreciated the picket line being orderly and he hoped it would continue to be that way; he didn't want any trouble. I told him that's the way we wanted it. He told me he forgot the day before to tell me how we could identify the salaried employees. He pulled a card out of his pocket and had his name and some number on it which was between two and four thousand. I don't recall what his number was, but anyway, it was in between those numbers. Said any salaried employee would have that number and that hourly rated employees was above four thousand.

Q. Do you recall Hovis was standing behind you during that conversation, too?

A. He could have been.

Q. You say Hoyt Grizzard was standing right there with you?

A. That's right.

Q. Did you ask Grizzard to go with you?

A. I did.

Q. Mr. Duncan, after the 18th day of July, the first day of the strike, they got the picketing organized pretty well and a schedule made out in three or four days, didn't they?

A. That's right.

Q. After they got it organized, did you stay in here constantly or were you in and out?

A. In and out.

Q. Were you here on the afternoon of August 20th?

A. I got to Decatur that evening around, it was already night. The sun was down when I got in.

Q. Where did you come here from?

A. Atlanta.

Q. When you first got here on the evening of August 20th, did you contact any of the pickets or anybody connected with the strike?

A. After I checked in at the hotel and got something to eat, I went out to the picket line and talked to some of them.

[fol. 525] Q. What time did you get out to the picket line?

A. I imagine 8:30 or later.

Q. You remember talking to anybody in particular?

A. Olan Drake in particular.

Q. Who?

A. Olan Drake.

Q. What was the substance of your conversation with Olan Drake?

Mr. Harris: We object; hearsay, narrative of a conversation already occurred.

Mr. Adair: Olan Drake, he testified he had a conversation with Chief Whitemire and asked Whitmire if they would wait until Duncan or some official got here, about whether or not the dinky should move.

Court: The fact that he talked to him is evidence, but what was said would not be evidence.

Q. Did you talk to Olan Drake?

A. I did.

Q. Did you issue instructions to Olan Drake after talking to him?

Mr. Wilkinson: We object; hearsay.

Court: Overruled.

Mr. Wilkinson: We except.

A. I did.

Q. What were those instructions?

A. I told him that they could not forcibly stop that engine from the inside from coming out to get copper if it was out there. If the railroad would not stop upon their request, that we could not forcibly stop it and not to try.

Q. You know whether or not there was any such incident after you gave such instruction?

A. I do not.

Q. You don't know of any such incident?

A. No.

Cross examination.

By Mr. Wilkinson:

Q. It was your purpose and the purpose of the other officials associated with you in directing this strike to make the picketing effective, wasn't it?

A. It was my purpose to make it orderly.

Q. To make it effective, wasn't it?

[fol. 526] A. By urging people not to go in, but not by force.

Q. Your purpose was to make it effective and to be effective it had to keep the workers out?

A. If we could by urging people to stay out.

Q. Then you did put enough men to block the entrance so they could not get in?

A. That isn't true.

Q. You didn't block the entrance to the plant?

A. We did not block the entrance.

Q. You saw the picture that we ran of that picket line?

A. I saw a great many going through.

Q. You saw them going through when the picket line was opened up when the cars were going through. Did you open up on that morning and let hourly rated employees go in?

A. Didn't any try to go in.

Q. Russell didn't try to go in?

A. No.

Q. You swear to this jury that Paul Russell didn't attempt to go through the picket line that morning?

A. Paul Russell drove up and stopped, and he didn't make any attempt to go through.

Q. Didn't attempt to enter the plant?

A. No.

Q. You positive of that?

A. I am.

Q. How many people congregated around his car when he got up there?

A. Six, eight or ten.

Q. Anyway for him to get in the entrance without running over the picket line?

A. Yes, he could have got in. If he said he still wanted to go, he could have got in. He was told that.

Q. Who told him that?

A. I don't know who told him.

Q. You directed the picket line?

A. No, I was there, but I wasn't directing the picket line.

Q. Did you tell him that he could go through?

A. I didn't talk to him.

Q. You didn't say anything to him at all?

A. None whatever.

[fol. 527] Q. How much were you being paid a week for your services to the union on that occasion?

Mr. Adair: We object; what Duncan may or may not have made is immaterial with this case and immaterial with all the issues of this case, and the question is asked only in attempting to create prejudice.

Court: It might shed some light on his interest. Overruled.

Mr. Adair: We except.

A. \$115.00 a week.

Q. Drawing expenses?

A. Yes, sir.

Q. \$15.00 a day?

A. No.

Q. How much a day?

A. It could have been \$15.00, but I was allowed \$8.50 a day for eats and whatever other expenses come along and my hotel bill not to exceed \$6.50 a day, and not any time have I been in Decatur when my hotel bill went to \$6.50.

Q. Then if I understand you, the total expenses was limited to \$15.00.

A. It could have been.

Q. If they were not that much, you drew your actual expenses?

A. I drew \$8.50 per day plus hotel bill.

Q. The hotel bill, if it was \$6.50 you drew that?

A. It was not that much in Decatur.

Q. How much were your expenses as a matter of fact?

A. My hotel bill ran around \$4 or \$4.50 a day.

Q. How much did your eats run?

A. I received \$8.50 a day for that.

Mr. Adair: I renew my objection; immaterial, incompetent in this testimony.

Court: It is in now.

Q. You been working for the International Union starting from, I believe you said, in 1943?

A. That's right.

Q. When was your connection with them terminated?

A. May 23rd of this year.

Q. You still a member of the organization?

A. I am.

Q. But not a salaried agent?

[fol. 528] A. That's right.

Q. Starling was Regional Director?

A. That's right.

Q. When he was on the ground here, he was your superior?

A. Right.

Q. Volk was the International Representative?

A. That's right.

Q. And when you and Starling were absent, Volk was in command?

A. He was here—

Q. In charge when you were absent?

A. Yes, sir.

Q. That was the chain of the command you had?

A. We didn't have any dictator here.

Q. I asked you about the chain of command.

A. I was in charge.

Q. Did you go to the three o'clock meeting down there the afternoon of the 17th at the plant were you conferred about standby assistance?

A. I did.

Q. You were spokesman?

A. That's right.

Q. Volk down there?

A. No, sir.

Q. You positive about that?

A. To my recollection, he wasn't there.

Q. Do you have any recollection on the subject?

A. Yes.

Q. Your recollection is that he was not there?

A. Yes.

Q. You pretty positive?

A. I believe he wasn't there.

Q. So you addressed the meeting up there?

A. I did.

Q. And didn't you tell the men in that meeting that they had good working conditions and good jobs but to keep things that way they would have to have a contract with the company?

A. No, I don't think I told them that.

Q. In substance, did you tell them that?

A. No, I don't think so.

Q. Was that subject mentioned in the course of your remarks?

[fol. 529] A. No, I don't think so.

Q. Just refresh your recollection and see if you said anything you can recall on that subject?

A. I told them they were making from 15 to 45¢ less here than in another plant of the company making identical material.

Q. Did you tell them the difference in the cost of living in Decatur and Detroit?

A. It didn't show much difference.

Q. A five room house in Detroit is \$135.00 a month and in Decatur it is \$45.00 a month.

A. I have not priced the rent.

Q. You didn't tell them anything about the rent?

A. I told them about the government statistics.

Q. Did the government statistics show what rent was?

A. I was going by the over-all cost of living, not any individual item.

Q. Did that show the comparison of rent?

A. I was going by the over-all cost of living.

Q. Did the government statistics show the difference in the cost of groceries in Detroit and Decatur?

A. The same answer goes to that as the other.

Q. You didn't look at any items comprising the cost of living?

A. I went to a figure.

Q. What did that figure include?

A. It included a lot of things.

Q. Include rent?

A. Sure.

Q. Including groceries?

A. Sure.

Q. You know anything else it included—clothing?

A. Yes, sir.

Q. Did you make any comparison between the prices of groceries in Detroit and Decatur?

A. I didn't make any comparisons. Just took the total.

Q. Did you address the second meeting of the union in Decatur?

A. I did.

Q. You tell them in that meeting that they had a good job and good working conditions, but to keep it that way it was necessary to have a contract with the copper plant? [fol. 530] A. I told them just like I did the other. That they didn't have any protection. If management discharged them without a contract and without an agreement, they could plead and beg but they didn't have any procedure to get back; and if management laid off an old fellow and kept a young one without a contract, they were at the mercy of the company.

Q. What did you say, if anything, about having good working conditions but in order to keep them, they had to have a contract?

A. I don't recall making that statement.

Q. Would you say you didn't make it?

A. I might have said that it was work about as good as any plant maybe where they didn't have a contract, but I told them that day that without a contract, without any grievance procedure, without arbitration and without seniority, they was at the mercy of the bosses out there.

Q. What was it you wanted the company to arbitrate?

A. We wanted to put the arbitration in the contract in case grievances come up and a member was discharged, laid off wrongfully and if you took the grievance up and got into management and management would refuse, maybe wanted to keep some fair haired boy and red apple boy out of line of seniority, then you could take it to arbitration and get an impartial arbitrator to rule whether or not it was in violation or not.

Q. Did you have anything in your proposed contract about the red apple boys or the fair haired boys; what management was to do in respect to him?

A. No.

Q. Nothing to prevent you from putting those provisions in your contract, was there?

A. I imagine management would have had something to say about it.

Q. That was a matter that could be covered by stipulations between the parties?

A. What matters?

Q. These matters you referred to.

A. It has never been customary in my contract to move any fair haired or red apple boy, but you get a grievance procedure and seniority and then they could take care of those people.

Q. Under that contract a grievance could arrive and you wanted arbitration?

A. If they would make a contract and when they gave you a final answer, if you wasn't satisfied you could strike; they proposed language to that effect. We didn't want that. [fol. 531] Q. The company proposed language you could strike?

A. In the event we took a grievance to them and they said no, then we could strike without violating the contract.

Q. You proposed no strike without arbitration?

A. That's right.

Q. The company turned that down?

A. That's right.

Q. Again I ask you what was to be covered by arbitration?

A. Any grievance that arose that wasn't satisfactorily settled at the top level of management that the union felt like they hadn't got the right answer, you could go on to arbitration.

Q. And the procedure was if an individual felt like he hadn't got a right deal, he made complaint, and if they couldn't settle the complaint, it was left to arbitration?

A. Not automatically?

Q. How?

A. We advocate getting that language in the contract; however, there is many a grievance wrote by the individual in the plant that never goes to arbitration. The union looks at the grievance and if they feel they are right, why the case goes to arbitration. If they feel they are wrong, or whether or not that the contract, according to the language, that you couldn't win a case, it doesn't go to arbitration.

Q. The union is judge as to whether he has a just grievance or not?

A. They are not.

Q. If it is a just grievance it goes to arbitration?

A. That's right.

Q. Did I understand you to say that you stated to the one o'clock meeting that you were not recommending that they accept or reject the contract?

A. That's right.

Q. And did I understand you made the same recommendation to the second meeting?

A. That's right.

Q. And you made the same recommendation to putting up a picket line?

A. Yes, sir.

Q. You didn't recommend the picket line be established?

A. No, sir.

Q. You left that up to the group, is that right?

A. Yes, sir.

[fol. 532] Q. I will ask you if it isn't true that the union had the name and address of every member of the union who was employed there at that time?

A. No, it isn't true.

Q. You kept books on them whether they paid dues or not?

A. I understood you to say every one in the plant, and we had lots of people who had their names and maybe just had "Hartselle" but we didn't have "Route 1, Box 489".

Q. But you had the names of all the members employed in the plant?

A. We had the names.

Q. Where are those records kept?

A. In the union office.

Q. In Detroit?

A. No, sir.

Q. In Decatur?

A. We had them here.

Q. When you said "we", who had them?

A. I don't have them in my possession; they are in town in the office.

Q. Available to you?

A. Yes, sir.

Q. When did you first come to Decatur with reference to the matter of negotiating a contract with the company?

A. The first conference we had with management was May 21, 1951.

Q. Had you been in Decatur previous to that?

A. Sure.

Q. How long had you been here?

A. I never did stay but a day and night, but I've been here several times.

Q. How many times in your best judgment had you been here previous to that time?

A. I couldn't say; several times.

Q. On May 24th you had the first conference?

A. May 21st.

Q. Did you remain here from then on?

A. No.

Q. What part of your time did you spend in Decatur from May 21st to July 18th?

A. When I come in town, like May 21st, the meeting that afternoon was at four o'clock and we went in and stayed four and a half to two hours, and if we made a meeting [Vol. 533] the next day, I would be here that day. Then I would leave and come back the next week, the date of the conference, and if we had one day, I would go back. I didn't stay here all the time.

Q. Between May 21st and July 18th approximately how many visits did you make to Decatur?

A. I couldn't say; several.

Q. Here every week, were you not?

A. I believe there was one week I wasn't here.

Q. And the other weeks, you were here from one to three days?

A. Some weeks two days and some weeks one day.

Q. Do you recall the date of the certification?

A. May 4, 1951, that is my belief.

Q. Then from May 4, 1951 until you met with management on May 21st, you were engaged in working up a proposal to submit to management?

A. Some of that time.

Q. Did you work up the proposal?

A. Along with the committee.

Q. Starling help?

A. He advised us some.

Q. Volk help any?

A. He did.

Q. You, Starling and Volk and the committee combined worked out the proposal to submit to management on May 21st?

A. And then we had some meetings and presented it to the membership.

Q. That was the way the proposal was worked up?

A. Right.

Q. Were you out there the afternoon that the dinky was held up?

A. Not at the time; I got in here that night after it was all moved away.

Q. Did you have a conversation with Starling about making arrangements for bail bonds for some member in Decatur?

A. I believe I did.

Q. When did you have that conference with him?

A. To the best of my recollection, it was August 20th, I believe.

Q. That was the day that the Daily carrying a full page ad said that the plant would be reopened and requesting all who wanted to work to report?

A. Along about that time.

Q. You saw the ad?

A. I don't recall whether it was the 20th or 21st.

[fol. 534] Q. As a matter of fact, it was published on both days, wasn't it?

A. It could have been.

Q. I show you the "21st". Does that look like the ad you saw? Be sure.

A. I saw it after I got to Decatur.

Q. What time did you arrive at Decatur?

A. On the 20th?

Q. Yes, sir.

A. I imagine around 6 or 7 o'clock.

Q. What time did you have the conversation with Starling about the bail bond arrangement?

A. It was some time, as I recall, before I left Atlanta.

Q. Before you left Atlanta that day? You were advised by Volk over the telephone that this ad came out in the paper?

A. He called me and told me he had heard the plant was going to reopen but I don't recall about the paper.

Q. Mr. Volk called you and advised you he had learned or heard the plant was going to reopen?

A. That's right.

Q. Did you immediately contact Starling about the bail bonds on the information you had from Volk?

A. I did.

Q. Did you request him to call headquarters or out in Detroit and have arrangements made for the bonding company to make bonds for union members in Decatur if needed?

A. I asked him to work it out.

Q. To arrange for the bonds to be made?

A. Yes, sir.

Q. That is the substance of what you asked him?

A. Right.

RALPH WEBSTER, next witness for the defendants, being first duly sworn, testified:

Direct examination.

By Mr. Adair:

Q. Your name Ralph Webster?

A. It is.

Q. Ralph, how long have you lived in Decatur, Alabama?

A. I have lived in Decatur since 1948.

[fol. 535] Q. Up until when?

A. Until August, 1952.

Q. Prior to living in Decatur, where were you living?

A. I moved here from Memphis, Tennessee.

Q. Where were you going to school when you graduated?

A. In Birmingham, Alabama.

Q. Did you ever attend West Point Military Academy?

A. I was appointed to West Point where I enrolled in July, 1942.

Q. What congressman appointed you?

A. Joe Starnes.

Q. What happened on that, Mr. Webster?

Mr. Harris: We object to that.

Q. Were you turned down because of paralysis of the left side of your face?

Mr. Harris: We object.

Mr. Adair: Your Honor, I want his background, who he is.

Court: Go ahead.

Mr. Harris: We except.

Q. Say you did graduate in Birmingham?

A. Yes, sir.

Q. What school?

A. Woodlawn High School.

Q. Your wife an Alabama girl?

A. Yes, sir, from Decatur.

Q. You have children?

A. Have two, girl and a boy.

Q. Did you try to go back to work at the copper plant after the strike?

A. I reported for work on September 24th.

Q. They give you work?

A. No, sir.

Q. Where were you able to obtain work?

A. I was out of work until in November, 1951; then I went to work for Reynolds Aluminum and worked approximately thirty days and I was called in the office and told I wasn't needed any more without any explanation.

Q. Without any explanation?

A. No, sir.

Q. Have you been able to find a job?

A. I was called back there after I was off 13 days. I [fol. 536] was working on a permit with the electricians union and they began to investigate why I was called off. They received a letter I had been fired from the copper plant for the destruction of company property.

Mr. Wilkinson: We move to exclude that; incompetent, illegal, immaterial.

Court: Sustained.

Q. What is your trade?

A. Electrician.

Q. Where did you learn that trade?

A. My granddaddy is an electrical contractor in Birmingham. I used to work for him in summer, and when I was going to school, I attended night school in Birmingham to take blue print reading.

Q. Blue print reading?

A. Electrical blue print reading. I served out my apprenticeship with the Kyser Ship Yard at Portland, Oregon. I have had a journeyman's rating since March.

Q. In connection with your speaking, do you have partial paralysis of the left side of your face?

A. Yes, sir.

Q. When did you come to work for the company, copper company?

A. I started to work for them on January 5, 1949.

Q. 1949?

A. Yes, sir.

Q. What was the nature of the work out there?

A. They hired me as a second class electrician.

Q. Did you work with the plaintiff in this case, Paul Russell?

A. I did.

Q. You knew him out there?

A. Yes, sir, I did.

Q. How many electricians were working there at that time in 1949, if you remember?

A. At the time I hired in to work, I think ten and I was the eleventh man.

Q. Russell already there?

A. Yes, sir.

Q. You got to know him well?

A. I did.

Q. Was there an election out there in 1949 on whether or not the electricians wanted to be represented by a bargaining agent?

[fol. 537] A. There was.

Q. Were you there at that time?

A. I was.

Q. Did you have any discussion with Russell prior to that election about it?

A. Yes, sir. At that time I was one of the first men in electricians trying to organize the shop, the electricians shop.

Q. You were trying to organize?

A. Yes, sir.

Q. Did you talk to Russell?

A. I have talked to him on numbers of occasions about joining and the benefits of it.

Q. Did you get him to join?

A. No, sir, he never did join.

Q. You know whether or not he did attend any union meetings?

A. Yes, sir, I invited him up, him and M. D. Whitworth.

Q. They did come to one meeting?

A. Yes, sir.

Q. Was another election held in the plant in 1951, in May?

A. There was.

Q. Late April or around May 1st?

A. April 26th if I remember correctly.

Q. Did you talk to Russell any before that election came off?

A. Yes, sir, a time or two I thought him and Whitworth was going along with the rest of the boys.

Mr. Wilkinson: We move to exclude the statement he "thought he and Whitworth was going along with the rest of the boys"; mental operation of the witness; incompetent, irrelevant, immaterial.

Court: Sustained.

Q. Was Whitworth and Russell there, the plaintiff, they the only two that had not joined up with the electricians?

A. That's right.

Q. Were you elected to the negotiating committee?

A. No, sir, I wasn't; I was nominated and I turned the nomination down.

Q. You were not in on the negotiations?

A. No, sir.

Q. On the 17th day of July, 1951, the day before the [fol. 538] strike, did you work that day with Paul Russell?

A. I did.

Q. Where were you working with him?

A. We were putting in a white way, street lights they are commonly known.

Q. Where were you putting them in?

A. These lights are around the entire plant, some of them being outside the plant property; they go up to where the sign is, the company line is the last street light.

Q. Is the lights out there big?

A. Yes, sir.

Q. You and Russell putting those in?

A. Yes, sir.

Q. Putting bulbs in them?

A. Yes, sir, we had to turn them on and check them and make a list of those out and got back and cut the current off and go back around the line and put the bulbs in on the ones we had listed.

Q. Was that regular current, 110, or not?

A. No, sir, that was a special circuit. The City has the same circuit. The bulbs are not classed in wattage like ordinary bulbs; in so many lums I believe they were called.

Q. That more powerful electricity?

A. Yes, sir.

Q. How were you and he traveling on that occasion working on these?

A. We were using a company jeep and he had rigged a platform—I think Russell suggested this platform; take a straight ladder, probably a 16 or 18 foot straight ladder mounted on the back of a jeep, fixed up and was used to reach the lights. Along the back of the property the lights are much higher than in the front. The ones along the back have a arm that sticks out about four feet and then the bulb is out there; and we'd run the jeep up under the light and climb this ladder and one would get on the ladder to reach them. Short as I was, I had to get on the top rung to reach them.

Q. How much do you weigh?

A. I usually run between 115 and 121.

Q. How much did you weigh at that time?

A. Around 116.

Q. 116?

A. Yes, sir.

[fol. 539] Q. Who was doing the climbing of the ladder, you or Russell?

A. We alternated part of the time; he would do the driving and I would climb, then I would do the driving and he would do the climbing.

Q. You going in and out of the gate?

A. Yes, sir, on this particular occasion, we always saved the lights on the outside of the plant until last, because we had to take the ladder down to go under the canopy at the gate.

Q. There was some structure over head?

A. Yes, sir, a concrete canopy for the protection of the guards when it was raining.

Q. You had to take the ladder down to get under it?

A. Yes, sir.

Q. You remember what time of day you started on that job on the 17th?

A. It was right after lunch.

Q. You and Paul Russell?

A. Yes, sir.

Q. Do you remember seeing Howard Hovis out there in the vicinity of where you were working at any time that afternoon?

A. Yes, sir, it was, well in fact, the truck had been on the outside, putting in lights and we were coming back in. We had taken the ladder down. And Russell was walking the ladder under the canopy, and instead of taking it plumb off, he was holding on the end and I was driving slow.

Q. Did you get under the canopy at the time you saw Hovis or where did you see him?

A. Just past the canopy.

Q. You speak to Hovis?

A. I saw Hovis come out of the guard house there and I think I hollered to him.

Q. He in company with anybody?

A. Duncan was with him.

Q. Say you did holler to him?

A. Yes, sir, and I got out of the truck and walked over to him and asked him, "Have you reached a settlement with the company?" He said, "No, we've been in to a meeting with them. The second shift, we have already met with

them and they voted to strike in the morning, the 18th, at 8 o'clock and we have got through meeting with Oakes and we offered him standby people but he told us he didn't need standby people and was going to close the gates to hourly employees and nothing but salaried employees would be admitted to the plant."

[fol. 540] Q. You know about what time that was?

A. It was between 3:30 and 4 o'clock, because by the time we got back, put the ladder up, it was quitting time.

Q. What did you do after the conversation with Hovis?

A. I got back in the truck and drove down to put up the truck,

Q. Was Paul Russell in the truck?

A. Sitting by me.

Q. Did you have any conversation?

A. I repeated what Hovis told me, and we discussed what had taken place before that along with the company contract and how we thought we might come out on the strike, whether we would do any good. He seemed to think it would not do any good.

Q. That was what he said?

A. Yes, sir. I said that at least seems the only way we were going to get anything; either strike to get something or either forget the whole deal; that we might as well give up the union if we couldn't get a contract.

Q. What did he say?

A. He said we never would get one.

Q. He said you never would get one?

A. Yes, sir.

Q. What did he say about the strike the next morning, if anything; did you tell him what Hovis said about the second shift voting to strike the next morning?

A. Yes, sir. I don't remember his exact words, but the statement was that it would not be half of the people come out on the strike; we would not have support of half of the people.

Q. You would not have support of half of the people?

A. Yes, sir. I was of the belief we would have at least 95%.

Q. Did you tell him what Hovis said to you about Mr. Oakes saying the plant would be closed?

A. Yes, sir. I definitely told him Oakes said the plant would be closed to hourly rated employees.

Q. What did he say to that; you recall anything he said in answer to that?

A. If I remember correctly, he told me he guessed he would have to take another vacation; he'd only had two that year.

Q. Do you know why Mr. Russell had two vacation- or whether or not he had?

A. No, sir. Anytime he wanted off, he could get off. [fol. 541] Some of the rest of us had hard times getting off.

Mr. Wilkinson: We move to exclude that statement; incompetent, irrelevant, immaterial; invades the province of the jury.

Court: That is out.

Q. You know whether or not Russell has been drawing company pay right on while in this trial?

A. No, sir, I don't know whether he has or not.

Q. You know whether or not he drew pay when they gave him two vacations pretty close together?

A. At that time, the rest of us drew vacations all at the same time, and if we got a vacation we got it whenever they said they could do without us for a week.

Q. What kind of electrical work did Russell do mainly?

A. He done repairing and fixing of the instruments, air conditioning, and part of his regular duty was what we call making the round, like going by the gate house and seeing if the heating unit was putting out, and the same thing at the office building and at the propane plant. Up until they got natural gas, they was using propane gas; and he had to check the pump and guage and to see if everything was o. k.

Q. Did you do about the same thing?

A. When Russell was on vacation or laid off, I usually made those rounds and took his job.

Q. When he was there, what kind of work did you do?

A. I was out in the plant on different breakdowns, things like that. One six months period I didn't do anything but build coils for the electrical furnaces. That was when they were trying to get organized. I wasn't allowed out of the electrical shop.

Q. Russell every do that type of work in connection with the furnaces, repair work?

A. I understand he did before I went to work there.

Q. Part of his duty was to go to the personnel office each morning?

A. Yes, sir.

Q. And when he was gone on one of his vacations and you had to do his work, did you go to the personnel office in his place?

A. Yes, sir, just walk in and check the thermometer attached to the thermostat to see if the building was the right temperature.

Q. Were those air conditioning units?

A. Yes, sir. They have got electrical heating system in there, too.

[fol. 542] Q. Air conditioned in the summer time?

A. Yes, sir.

Q. That is in Mr. Oakes' office, is it?

A. Where Mr. Oakes' office is is air conditioned, too. In fact, there are two units in that office.

Q. His office isn't there in the personnel office or is it?

A. I understood the personnel office to be at the gate house. That is where they hire in. Oakes office is down in the office building, in the same building that the plant manager's office.

Q. In your round, when you were substituting for Russell when he was on vacation, did you go to the office building where Oakes worked?

A. Yes, sir.

Q. Did you also go to the personnel office at the gate?

A. Yes, sir.

Q. At the gate, do you have a conference room there?

A. Yes, sir, you have to go through the conference room to get to the air conditioning units.

Q. When you were checking on the air conditioning units in Oakes' office, did you ever see him come to work in the morning?

A. Yes, sir.

Q. Did he get to work in the morning before eight o'clock?

Mr. Wilkinson: We object; what difference does it make what time Oakes got to work?

Court: Overruled.

A. We had a log we had to sign and show we had been there and checked in. If I remember correctly, I usually signed it between 8:30 and 8:45 and I have seen Oakes coming in every occasion at that time I would be signing that log.

Q. Around 8:30 or 8:45?

A. Yes, sir.

Q. Mr. Webster, did you attend the union meeting at four o'clock in the afternoon of July 17th right after you had seen Hovis out there?

A. Yes, sir.

Q. Did you see Russell at the union meeting?

A. No, sir, he wasn't there.

Q. He didn't come down. Did you ask him to come down?

A. Yes, sir, I told him that if he would join, it wouldn't cost but a dollar and it would be the best dollar he ever spent; that if we did come out on the strike, would be [fol. 543] visions made for us wouldn't anybody go hungry, I would guarantee that; if he was a member he would be taken care of along with the rest of us.

Q. When you went to the hall at four o'clock, lot of people there when you got there?

A. Yes, sir, I know I had to stand in the little office just outside the hall, that adjoins the hall, because I couldn't get up in the hall so many people there.

Q. Give us an estimate of how many people you think was there.

A. The hall was full and people standing on the outside. I would say the hall would hold 200 and there must have been over 250 or around 250.

Q. What took place at the meeting?

A. The negotiating committee reported to us on what had been offered by the company and showed the difference between what we were asking for and what the company was offering and wanted to know what we wanted to take; and I believe one of the boys made the remark; "The little red book written different." That is the little book they give when you go to work; got all the rules and regulations and what they will fine you for and one thing and another.

Q. That a little booklet when you go to work out there?

A. Yes, sir.

Q. "Welcome to Wolverine"?

A. Yes, sir. It was a yellow back book towards the last.

Q. Let me ask you if this is the book you are talking about. (Mr. Russell has one in his pocket) Can I see that book, Mr. Russell? Is that the little book you're talking about?

A. Yes, sir, except when I went to work it was red.

Q. You know whether or not Mr. Russell is the man that furnishes that book to employees out there?

A. No, sir.

Q. Is that the comment that was made: that the contract the company offered was about like the little red book?

A. Yes, sir.

Q. Then what was done?

A. The membership voted to reject the contract as it then stood; then a motion was made to strike the plant the next morning at eight.

Q. That motion carried?

A. It did; in fact, I don't know anyone that voted against it.

Q. What was done then?

[fol. 544] A. Well, the question come up about what we were going, how we were going to picket and when we expected to picket, and I know Mike was standing in the office at the time long towards the last of the meeting?

Q. Who?

A. Mike Volk, and he asked me to start trying to take people, get the names and addresses and when they preferred to picket. I started out trying to but there was so much confusion and racket and everything, I don't think I got over fifteen or twenty signed up that night.

Q. What was the discussion there?

A. I got about 15 or 20 cards signs up that afternoon, but just gave it up as a hopeless case and decided to wait until the next day.

Q. What kind of cards?

A. For picket duty. We were trying to get the time they preferred to picket, what days they could picket, approximately where they lived, and if they could to give us the

name of someone belonging to the union that lived close to them.

Q. What plan, if any, was made for obtaining that information and organizing the picket schedule?

A. I think Mike left the office then and went up to Duncan and talked, and it was announced for everybody to be there the next morning so we could get that information and get the picket schedule set up.

Q. Did most everybody come out the next morning?

A. Yes, sir.

Q. Did you do any work on that the following morning?

A. I spent all that afternoon. I don't think I worked much on it that morning.

Q. On the next morning, what time did you get to the picket line?

A. About six o'clock.

Q. What did you do after you got there?

A. I was in the first bunch that went out and we went by the union hall and picked up these signs. We had to finish making some of them and had to put handles on them.

Q. What kind of handle did you put on them?

A. On this lath, like out in plastering in a house, between $\frac{1}{4}$ and $\frac{3}{8}$ inch thick and $1\frac{1}{2}$ to 2 inches wide. I got them over at—next to the river—Fite Lumber Company, Gobble Fite Lumber Company.

Q. You sure they weren't 2 x 2's?

A. Oh, no, sir, we'd get pretty tired carrying 2 x 2's.

Q. Lath like sticks, were they?

[fol. 545] A. Yes, sir.

Q. What else did you do that morning?

A. I stayed on the picket line to around 6:30, maybe 6:45, and the police car come up and talked to us. By that time there were quite a few cars there, some parked on the edge of the pavement, and they asked them to park the cars where they would completely be off the pavement and they didn't want any bumpers sticking over on that pavement; that the road would have to be kept clear because of the fire hazard. If the Fire Department was called to the Flour Mill or the copper plant, they wanted plenty of room to get through, and said if we would keep the road clear, they would not be out except on the regular

round. We told them we would keep them clear. At that time I went to the intersection of Grant and Railroad Avenue and began stopping the boys as they come up; I told them when they parked, would they please park off the pavement; that had been the request that we keep it clear, and I told them that the gate was closed to hourly rated employees, but the salaried employees, I told them they would have to, if they would stop at the picket line and identify themselves, they could go through without any trouble.

Q. Were you standing there at Grant Street?

A. I was standing—it makes a "Y", and I was right in the center of the "Y".

Q. Right in the center of the "Y"?

A. Yes, sir.

Q. What were you doing?

A. Stopping the boys there.

Q. How?

A. Flagging them down.

Q. With your hand?

A. Yes, sir.

Q. Were they stopping?

A. Everybody stopped except a few. Three or four went by me.

Q. Those that stopped, you told them what?

A. I told them we had a picket line up and that there had been such a congregation at the picket line, that the police had asked us to keep that road clear, not to block it, and when they parked to be sure they pulled completely off the pavement, to keep the pavement clear at all times. I said a little more to some than others. Most of them I knew and the ones I didn't know, I didn't say too much to.

Q. You remember Paul Russell coming up?

[fol. 546] A. Yes, sir.

Q. To that place?

A. Yes, sir.

Q. How far would that be from where the railroad crossing is right at the plant property line where you were standing?

A. It would be about two ordinary city blocks or a little more.

Q. Did you see Paul Russell's car there behind another car you were talking to?

A. Yes, sir.

Q. Did you say to Paul Russell, "You might as well go on home today; we don't need you today. You can't go in"?

A. No, sir.

Q. You recall what you said?

A. Yes, sir, I was talking to somebody when he drove up. He parked behind or stopped; I didn't stop Paul. He stopped for the other car I was talking to. Who ever it was at the time, as soon as I got through, I walked back to his car and I don't remember the exact words, but the substance was, "Paul we have got a picket line up like I told you we would have. The plant is closed to hourly rated employees and if you are going to park, please park off of the highway."

Q. Did he answer you: "Go to hell"?

A. He did.

Q. Did he say anything else to you?

A. No, sir; he started up, threw the car in second and drove off pretty fast.

Q. You heard his testimony on the stand that's what he answered you?

A. Yes, sir.

Q. That's what he said?

A. Yes, sir.

Q. You saw him pull on out?

A. Yes, sir.

Q. Had you had an argument the day before, bad words?

A. I thought he was my friend until then.

Q. How long did you stay at the intersection of Grant and Railroad Avenue informing the folks they would have to pull off the road like the police told you if they wanted to stay?

A. Between 9:30 and 10, the police come back on the round. They come down—I don't know whether that is Railroad Avenue to right at the "Y" at Grant—one way, that street goes by the water plant—they come down that [fol. 547] way and made the turn into Grant and while I was talking to somebody, somebody parked right in the middle of the "Y". They wanted to know whose car it was,

and I said, "It got there while I wasn't looking." He and one of the police looked and there wasn't any keys. He said, "I'm going to drive back through town and if that car is still here when I come back around, I will have to call the wrecker and have it moved." I said, "It won't be here." I started up trying to find out who the car belonged to, took the tag number and the model of the car and about half way between that "Y" and where the picket line was, I found the boy it belonged to. I didn't know him, but he worked at one of the hosiery mills.

Q. You mean he wasn't even an employee?

A. Oh, No, sir. He's just gotten off the graveyard shift.

Q. You know why he came out there?

Mr. Harris: We object.

Q. He tell you why?

A. Just to come and look.

Court: That isn't evidence.

Q. Lot of folks there not employees of Wolverine?

A. Yes, sir, quite a few boss men here in town I recognized here in town. Most of them turned and went back when I asked them to go; told them we would appreciate it since there was so much confusion going on.

Q. Some did turn and go back?

A. Yes, sir.

Q. Do you have any estimation of how many cars parked on the right hands side of the street?

A. Right hand side?

Q. South side of Railroad Avenue?

A. It was full on that side from the "Y" on up and well beyond the "Y" on down Grant Street, and on the left hand side they had to begin to park down past the entrance to the water plant at the time I left the "Y".

Q. Great many cars there?

A. I guess there was seven or eight hundred cars in all that morning.

Q. On both sides of the street?

A. Yes, sir.

Q. You knew a lot of the people that worked at Wolverine?

A. Knew practically all of them.

Q. Did you see a lot of people come by you that were not working at Wolverine?

A. Yes, sir.

[fol. 548] Q. Lot of those people park either on the right side or left side?

A. Yes, sir, and some turned back.

Q. See any women and children?

A. Quite a few.

Q. When you say you went up to find whoever left the car in the street, did you at that time see Paul Russell?

A. Yes, sir, he was sitting in his car.

Q. Sitting there by himself?

A. Yes, sir.

Q. Anybody around him?

A. No, sir, not anyone around him then.

Q. Sitting there all by himself?

A. Yes, sir.

Q. Anybody talking to him?

A. No.

Q. You go up and talk to him?

A. No, sir, somebody told me that—

Mr. Harris: We object to what somebody told him.

Court: Sustained.

Q. You didn't go talk to him?

A. No, sir.

Q. You didn't see anybody else talking to him?

A. No, sir.

Q. What was he doing there?

A. Just sitting in his car and perspiring like everybody else was.

Q. It was a hot summer day, July?

A. It was really hot. I blistered so bad I could hardly eat for two or three days.

Q. You see him when he left?

A. Yes, sir.

Q. Did you hear Mr. Schelbe, who is a high company official, give testimony that you were up on the picket line on the morning of the 18th at 7:40 A.M.; that you asked him for his identification card and he had some little dispute?

Mr. Wilkinson: We object to that.

Court: Sustain the objection as to what he heard about the testimony. The jury has that.

Q. I will ask you whether or not you were at the picket line at 7:40 in the morning?

[fol. 549] A. No, sir.

Q. Where were you?

A. Down at the intersection of Grant and Railroad Avenue.

Q. Did you talk to Mr. Schelbe at the picket line at that time on the day of the 18th?

A. No, sir.

Q. Did you ask him for his I.D. card at the picket line on July 18th?

A. No, sir.

Q. Did you force him at the picket line to run off the highway in order to get to the plant on the 18th?

A. No.

Q. Did you talk to him at all on the 18th?

A. No, sir.

Q. At 8:30 in the morning on the 18th were you at the picket line or in the vicinity of it?

A. No, sir.

Q. Where were you at 8:30?

A. Still down at the "Y" between Grant Street and Railroad Avenue.

Q. I understand your testimony, that is several blocks distant from the picket line?

A. Yes, sir.

Q. Did you or did you not tell Mr. Richardson at or near the picket line at 8:30 A.M. that he could not go down and get his pay check?

A. No, sir.

Q. Did you or did you not tell J. E. Richardson at any place on that occasion that he could not go get his pay check?

A. No.

Q. Did you talk to J. E. Richardson down on Grant Street at the intersection?

A. Not to my knowledge; nobody asked me about a check down there.

Q. You sure of that?

A. Yes, sir.

Q. You sure you didn't go up to the picket line and tell anybody about a check?

A. Yes, sir.

Q. You know whether or not you stated to Mr. J. W. Thompson that he could not get in the plant?

A. No, sir, I didn't tell anyone they couldn't get in the plant.

Q. You remember talking to J. W. Thompson?
[fol. 550] A. No, sir, I don't.

Q. When you returned, after you had done your work at Grant Street, you returned up to or in the vicinity of the picket line, did you see Burl McLemore anywhere around there?

A. Yes, sir. When I walked up, Burl was standing quite a little distance from the picket line on the south side of Railroad Avenue, and he was talking to someone when I first walked up, and they were discussing the strike in general. It was one of the union boys explaining to him that the plant was closed; it would not be open to hourly rated employees and I believe my first question to Burl was was he going to walk the picket line with us. He said, "No, I am going home and stay until this thing is settled." He turned around, handed me his lunch and said, "You're going to be needing this worse than I am."

Q. What kind of container was it in?

A. Paper sack.

Q. He turned around and handed that lunch to you?

A. Yes, sir.

Q. What did you do with it?

A. I turned around and gave it to someone in a foot or two of me.

Q. You know who you handed it to?

A. I am not positive on that. I was thinking I gave it to Smith. We call him "One Gut"; you couldn't get him filled up.

Q. That is who you think you gave it to?

A. I think that is right.

Q. Well, You're positive McLemore gave his lunch to you?

A. I am positive of that.

- Q. What did he say?
- A. "Here, you're going to need this lunch worse than I will. I am going home until this is settled."
- Q. You took it?
- A. Yes, sir.
- Q. You say anything else?
- A. No, sir.
- Q. Did he leave at that time?
- A. Yes, sir.
- Q. Had you seen McLemore previous to that?
- A. Oh, yes, sir.
- Q. On that morning?
- A. Yes, sir, I saw him when he went by me at the "Y".
- [fol. 551] Q. Did you wave at him to stop like the other cars?
- A. Yes, sir.
- Q. Did he stop?
- A. No, sir.
- Q. Kept going?
- A. Yes, sir.
- Q. Mr. Webster, there has been testimony here about a dinky. Were you at or in the vicinity of the picket line on August 20th after the company had announced they were going to reopen when they brought a dinky out to get some cars of copper?
- A. Yes, sir.
- Q. Did you pull a distributor head off that dinky and throw it away?
- A. I did not.
- Q. Pull some wires out of it?
- A. No, sir.
- Q. Cut two fan belts?
- A. No, I didn't.
- Q. Cut one fan belt?
- A. No, I didn't.
- Q. Grease the rails?
- A. No, I didn't.
- Q. Cut the air hose?
- A. No.
- Q. Did you take some keys out of it?
- A. Yes, sir.

Q. Tell the jury what you did in that connection.

A. I was just fixing to go home when the whole thing started. Howard Hovis, and his wife, and myself were in his automobile and just fixing to back out of the parking place when an automobile with four policemen in it and I believe that one like a tricycle of affair with one police in it came up.

Q. Was it a side car?

A. No, sir, it's got two wheels in back and one in the front like a tricycle. I told Hovis, "Pull up and let's see what this is all about." At that time they had not been around except when they made their regular round. There was always two policemen to the car. We got out. The policemen didn't say anything to us. Two or three lit a cigarette and seemed like they were waiting on something. I told Hovis, "Let's stick around a few minutes; something's [fol. 552] not right." Wasn't but a minute or two 'til I looked toward town and there was a L. & N. switch engine coming with five cars they were pushing. I think I am the one that told the picket line to get over on the railroad track. I told two men to stay in the road to keep the signs in the road. At that time it was right at four o'clock, because most of the day shift had gone home and the second shift hadn't come in to picket, and there was about, I believe counting myself and Hovis who was fixing to leave, 14 other pickets there at the time and Mrs. Hovis, 17 people there in all. That's not counting the policemen. We got on the track and was holding the signs where the engineer could see them and the railroad people. When they got up even they stopped. They got the engine a loose from the cars and the engine went back to town or back toward town.

Q. They didn't cross the picket line?

A. No, sir. It must have been three or four minutes elapsing until we heard them open the gates around the bend. You couldn't see but you could hear. Then the dinky appeared, the little company locomotive. He wasn't going too fast, easing along when he got to the pickets; they didn't seem like they were going to stop, seemed to be going slow and gradually going to the box cars. I thought they wasn't going to stop. So I ran around to the back of the locomotive. I forgot exactly the words—Charlie Tuck was

on the back, but I did tell him I was surprised at him of all people; that he had been a member of the CIO in Detroit; that I knew that for a fact and that he would be one of the men that would come out to bring that copper in." More or less I distracted his attention and got by him and got inside the cab. I was wanting to get Howard Hughes' attention, too. I had in mind to put it in reverse. I didn't know it had keys. After I got in, that was the first thing I saw. I just cut the motor off and pitched the keys out of the window and that is the extent of the damage I did to the company locomotive.

Q. When you went to work for the TVA, the company wrote letters you had damaged the company property—

Mr. Wilkinson: We object; no part of the res gestae; immaterial, irrelevant.

Mr. Adair: I withdraw it.

Cross examination.

By Mr. Wilkinson:

Q. You say you thought Mr. Russell was your friend up until the time he told you to go to hell that morning?

A. Yes, sir.

Q. What had he done to lead you to believe he was your friend up until that time?

[fol. 553] A. We'd always got along together on the job. If you want a specific occasion: Paul Russell and I was the only two men in the electrical department that would climb to the top of the water tower and a week or two before we got out on strike, Paul and I had to take an anti-rust device out of the tank. It was necessary to go on the top, but you've got to reach them off of a steel ladder that goes up. I held on to the ball at the top and stretched and Paul Russell held to my feet, and I figured he trusted me and I know I trusted him.

Q. You figured every fellow that climbed to the top of the water tower with you was your friend?

A. I wouldn't want to go up with somebody that wasn't my friend.

Q. Afraid something might happen?

A. Yes, sir.

Q. Up until the time you stopped him in the street and he told you to go to hell, he'd never done or said anything to indicate he was unfriendly at all?

A. No, sir.

Q. You considered him a good friend?

A. Yes, sir.

Q. What did you say to him when you stopped him that morning?

A. "Paul, we've got the picket line up just like I told you."

Q. You told him the plant was closed to hourly rated employees right then?

A. I told him the afternoon before.

Q. What else did you tell him?

A. And if he wanted to park his car to please park off the highway.

Q. Then his reply was, "Go to hell"?

A. Right.

Q. Had he ever, prior to that, given you a short answer to a question or request you made to him?

A. I don't think so.

Q. You had known him how long?

A. About two years.

Q. You had known him the whole time?

A. Yes, sir.

Q. During the whole time you had been associated with this man very closely, that was the first occasion he gave you a short and insulting answer to the statement you made to him?

[fol. 554] A. That's right.

Q. Did you hold any position in the local union, not the local union but the International Union in any way?

A. No, sir.

Q. Did anybody tell you that you could inform people who traveled that public street they could not get into the plant?

A. No, sir, I didn't tell anybody that.

Q. I just wanted to know if anybody invested you with that authority to tell people who traveled that public street they couldn't enter that plant?

A. No, sir.

Q. And if you did that, you did that on your own and in behalf of the union?

A. If I had done that, yes, sir.

Q. Everything you did there was in compliance with the instructions the union had given you?

Mr. Adair: I object.

Court: Sustained.

Q. Did you violate any instruction in conducting that strike out there and playing the part you played in it, or did you comply with the instruction the union gave?

A. With what instructions given me, I complied.

Q. You didn't violate any instruction given you?

A. No, sir.

Q. Did the union instruct you to get on the locomotive and pull out the keys and throw them out?

A. No.

Q. You did that on your own and did that to prevent them moving copper in the plant so the men couldn't go in to work?

A. I had friend in intimate danger on that railroad.

Mr. Wilkinson: I move to exclude that.

Court: I think that is an answer. Overruled.

A. Wasn't anybody in the plant then.

Q. Was your purpose in taking the keys out of the engine to prevent the engine from moving copper in the plant?

A. It was to keep them from running over—

Q. Wasn't your purpose to keep them from moving copper in to the plant?

Mr. Adair: We object to harrassing this witness.

[fol. 555] It's repetitious.

Court: He gave his answer. Whether that was favorable or unfavorable, he answered it was for the purpose of preventing them from running over somebody in front.

Q. Was it also for the purpose of preventing the moving of copper into the plant?

A. No, sir.

Q. You mean that had nothing to do with it at all?

A. No, sir.

FELTON DYER, next witness for the defendants, being duly sworn, testified:

Direct examination.

By Mr. Powell:

Q. What is your name?

A. Felton Dyer.

Q. Felton, you one of the defendants in this case?

A. I am.

Q. How old are you?

A. I will be thirty-five years old tomorrow.

Q. You married?

A. I am.

Q. Have a family?

A. I do.

Q. Own your home?

A. I do not.

Q. Do you maintain your home in Decatur?

A. I do.

Q. Born and reared in Morgan County?

A. I was.

Q. Are you employed at this time?

A. I am.

Q. Where are you working now?

A. Tennessee Valley Authority. My present job location is in Tennessee.

Q. Were you in the military service during the last War?

A. I was.

Q. In what capacity?

A. I was in the Infantry Division with the combat military police platoon.
[fol. 556]

Q. When were you discharged from service?

A. December, 1945.

Q. Were you residing here in Decatur at that time?

A. I was.

Q. Did you return to Decatur?

A. I did.

Q. Were you employed at the copper tubing plant some time after that; if so, when?

A. I was employed by the Wolverine Tube Division on October, I believe October 22nd. It was in October, 1948.

Q. 1948?

A. 1948, right.

Q. What position did you take out there?

A. As a welder.

Q. How long did you remain out there as an employee of that company?

A. I worked for Wolverine Tube from October 1948 until July 18, 1951.

Q. Who was the manager in charge of the company on July 18, 1951 at the local plant?

A. You speaking of the plant manager—D. W. Blend.

Q. At that time was Mr. Blend the President of the local Chamber of Commerce here in Decatur?

A. Mr. Blend was either the President of the Chamber of Commerce or he was elected to that position shortly after that. Sometime after that. In other words, it was along in that particular time.

Q. Do you recall the employees of that company having engaged or participating in an election with reference to a bargaining agent or representative for them after you went to work?

A. Yes, sir I do.

Q. How many such elections were had?

A. Two such elections.

Q. In your judgment, when was the first election held?

A. The first election was held sometime in 1949 I would say around, maybe March or April, one of those months, 1949.

Q. Subsequent to that date, when was the second election held on that issue?

A. It was held, the very best of my recollection, that was [fol. 557] in April 25 or 26, 1951.

Q. What was the result of that election, if you know?

A. The result of the election, that is, the people who were eligible to vote in that election, the union won the election by some few votes. I don't recall exactly.

Q. Was that the defendant union in this case?

A. Yes, sir.

Q. Was it duly certified as the bargaining agent or repre-

sentative of the employees of that organization subject to that election?

A. It was.

Q. You active in the movement in behalf of the union activities?

A. Yes, I was.

Q. On July 17, 1951 what shift were you working at the tubing plant?

A. On July 18th?

Q. 17th:

A. I worked first shift.

Q. 8 in the morning to 4 in the afternoon?

A. That's right.

Q. Did you work on that day?

A. I did.

Q. Did you attend a meeting of the union that afternoon any time?

A. Yes, sir.

Q. When and where?

A. That meeting was held, I would say that meeting started around 4:30.

Q. Where was it held?

A. In the union hall on Second Avenue. I don't know the exact number of the building.

Q. Here in Decatur?

A. On Second in the 600 block at that time. I don't know if they changed that or not.

Q. In your judgment, how many people were present at that time?

A. We had in my best judgment at least 250 people present there.

Q. I will ask you whether or not on that occasion, at that time and place, you were acting as temporary secretary for that meeting?

A. I was.

Q. Tell the jury, Mr. Dyer, what transpired at that meeting if you remember and recall at this time.

A. The meeting started. Mr. Duncan brought the union [fol. 558] membership up to date on the position that we were in so far as the contract negotiations with the company were concerned. In other words, he explained to us

the things that the company would agree to and the things they would not agree to. He explained the sort of contract the company offered to us. After he had explained to us the condition in which the contract negotiations had been left, Mr. Duncan said that he could not recommend the contract as it was. That he could not recommend the terms of the contract as we were being offered.

Q. What was said and done then?

A. Each member of the temporary negotiating committee also had some words to say in that same connection concerning the sort of contract that the company had offered us; that they could not recommend the contract either.

Q. Had there been a meeting prior to the meeting which you testified about that day?

A. It is my understanding that the second shift met at one o'clock.

Q. Did you have any report from your temporary negotiating committee at the second meeting you are testifying about with reference to any conference they had with the company since the one o'clock meeting that day?

A. The temporary negotiating committee reported to us concerning the meeting had with Oakes around three o'clock that afternoon.

Q. What report did they make?

A. After the meeting at one o'clock, they informed us they had arranged a meeting with Oakes for the purpose of offering to him the service of any employee or employees that he might need out of the union membership for the purpose of maintaining or protecting during the course of the strike and they informed us that Oakes had told them he appreciated it, but they had men on salary there who had been well trained in the same things and they were plenty capable of taking care of that equipment during the course of the strike, and that the plant would be closed to hourly rated employees and those employees, the salaried employees, would take care of that equipment there.

Q. Was that meeting advised of the earlier meeting with reference to the acceptance or refusal of the proposed contract?

A. We were informed as to the action taken by the members of the second shift at the one o'clock meeting.

Q. Tell the jury what action this meeting you are testifying about took with reference to the same matters.

A. You speaking of the one o'clock meeting?

[fol. 559] Q. No, what action the meeting you were in took with reference to the acceptance or refusal of the proposed contract and the strike.

A. After Mr. Duncan and each member of the committee had spoken in regard to the sort of contract we were being offered and each one stated they could not recommend the contract, there was a motion made from the floor that the contract be turned down. That motion was seconded and was put to a vote and was voted unanimously to be turned down.

Q. Any other motions submitted at that time?

A. Yes, sir, there was.

Q. What was it?

A. There was a motion made from the floor to follow the same procedure as the members had followed in the one o'clock meeting to take a strike vote. That motion was seconded. The strike vote was taken and they voted as the one just previous to that was also unanimous to strike the plant at eight the following morning.

Q. Did the meeting adjourn after that business session you testified about?

A. Well, after the membership had voted to strike the plant, we were informed as to what extent the International Union would support the strike and we were also informed as to how we should conduct ourselves on the picket line.

Q. Who informed you?

A. Mr. Duncan and Mr. Starling informed us of those matters.

Q. State to the jury what they said about those matters.

A. Mr. Duncan informed us to what extent the International Union would support us in the strike, that is, in reference to groceries, rent, mortgage payments, doctor bills and things of that nature. Mr. Starling, his words were along of the line of how we should conduct ourselves on the picket line.

Q. What were they?

A. Not to go to the picket line under the influence of liquor, not to bring any form of liquor on the picket line,

to conduct ourselves as gentlemen on the picket line, to picket peacefully, and he said that Mr. Oakes seemed to want to cooperate in that matter and we wanted to cooperate with them in that respect and wanted to be as peaceful and orderly as possible on the picket line. He wanted no violence of any sort and certainly no liquor on the picket line; they couldn't possibly have such a thing as that.

Q. As far as you know, or have knowledge, was that re-[fol. 560] quest complied with throughout the strike?

A. To my knowledge, that was carried out.

Q. Did you hold any position within the organization of your union during the strike while it was in progress?

A. During the strike I served with a group of fellows in what we call an arrangement committee.

Q. Tell the jury what that consisted of, what that committee did.

A. The arrangement committee was set up for the purpose of arranging to take care of obligations that we had been informed the International Union would take care of for us during the strike; the things that were part of the support we would receive from the International Union.

Q. Did it consist primarily of the things the International Union would provide, financial assistance for the members of the local organization or members participating in the strike?

A. I don't understand the question.

Q. Suppose you tell the jury what your duties were, of the arrangement committee you testified you were a member of.

A. We went to the different people; some of the people had obligations due, debts, mortgages, things of that nature, and made arrangements to take care of them for them.

Q. And were some of those, after you had made investigation, verified various claims, were they in due course, assisted by financial payment?

A. They were.

Q. By the International Union?

A. They were.

Q. You served on the committee that helped process various claims?

A. Yes, sir.

Q. To your knowledge, were you or any other member of the men of the organization, out of the plant at that time, paid any salary or wages or money in any form for your services?

A. We did not receive money in any form.

Q. Any cash paid to anybody?

A. I saw no cash during the course of that strike.

Q. Tell the jury what the primary payments that were made by the International Union while you served on the committee during the duration of that strike consisted of.

A. The payments that the International Union took care of was mortgage payments, house rent, doctor bills, medical supplies, school books and supplies.
[fol. 561]

Q. Pay any insurance for any?

A. That's right; took care of insurance premiums.

Q. Those were various items that primarily *that* you were concerned with during the strike?

A. Right.

Q. With reference to those items, tell the jury something of the nature of what you based your allotment or payment of those various items on; how did you arrange to make such payments you approved, if you did?

A. If the man was on strike and he had mortgage payments that were coming due, the Union made that payment for him; International Union made that payment.

Q. How did your union ascertain or determine whether he had payments coming due?

A. The member would present to us his statement or his note or some other verification of the fact that his mortgage payments would come due on some certain date.

Q. Then what did you do?

A. Those requests were turned in to the International Representative and he wrote the checks to cover those payments.

Q. Was it part of your duties, while you served on the committee, when application was made, to make an investigation of them?

A. Some of them, yes. Some of them we would check on because there were certain things that the International Union did not take care of, and a lot of the claims, etc. were checked on to be absolutely sure they came within

the scope of the things that the International Union would support us in.

Q. Do you tell the jury that you or no member of the committee received compensation, wages or salary for the work you did in connection with the administration of the financial assistance or relief that was rendered to various members?

A. None whatsoever.

Q. On the morning of July 18th, did you go out to the entrance or near to the entrance of the copper tubing plant?

A. I did.

Q. What time of day did you go?

A. I went about six in the morning, shortly before or shortly after.

Q. You have any judgment as to the number of people present at the time you arrived there?

[fol. 562] A. Wasn't very many people there at that time. I would say, to my best judgment, there wasn't more than between 30 and 40 people at the most.

Q. With whom did you go out?

A. With Norman Ange.

Q. How did you go out there?

A. In his car. He spent the night with me, and we drove from my house to the picket line.

Q. Got there about six?

A. Yes, sir.

Q. From six up until eight that morning, did the crowd increase in number from time to time?

A. It did.

Q. Tell the jury in your best judgment how many people were in that vicinity about eight o'clock that morning.

A. Well, in my best judgment, from the number of cars parked on either side of the street, Railroad Avenue, from the west of the picket line down as far as I could see from the position I was in, I would say there was somewhere in the neighborhood of 1500 people there.

Q. On either side of Railroad Avenue?

A. Yes, sir.

Q. You know whether there were people there that did not work at the company?

A. The biggest majority of the crowd did not work at Wolverine Tube Company. I saw a lot of people there that morning not connected with Wolverine.

Q. See ladies out there, too?

A. Yes, sir.

Q. See children out there?

A. I did.

Q. See men you knew that worked at other places out there?

A. I did.

Q. Did you know Paul Russell on July 18, 1951?

A. Yes, sir, I did.

Q. How long had you known him at that time?

A. Since shortly after I went to work at Wolverine. I got acquainted with him from doing various jobs over the plant for him. We do welding jobs for the electrical department.

Q. You see him out there that morning?

A. I did.

[fol. 563] Q. What time did you see him?

A. Mr. Russell got out there I would say between 7:30 and 7:40.

Q. How did he get out there?

A. In his automobile.

Q. Tell the jury, Felton, what you observed when you saw Mr. Russell on that occasion.

A. From my position on the picket line, the first time I noticed Mr. Russell or his automobile being there in the vicinity was when he was stopped. He stopped his car up, I would say, somewhere in the neighborhood of 30 feet, possibly a little more or less, from the picket line. After he stopped, I saw Howard Hovis walk out to the car and talk to Paul.

Q. Saw them talking?

A. Yes, sir. From the position that where I was standing, I couldn't understand any of the conversation. I was too far away to hear anything said, but they talked for just a short time when Paul evidently put his car in gear and started moving toward the picket line. I heard what seemed to be somebody's feet dragging or shufflings and I directed my attention back toward the car and I noticed

Hovis was on the side of the car. From all evidence he was trying to hold on the side to keep from being dragged or fall on the pavement.

Q. How long did that continue; over what distance?

A. He drove down to between 10 and 15 feet of the picket line.

Q. Then what?

A. After he stopped his car, then Hovis straightened up at the window and laid his arm or elbow up in the window and started talking again.

Q. They engage in conversation after the car stopped?

A. They did.

Q. The conversation they engaged in, was it normal, loud, low or how?

A. I would not say the conversation would be what you would consider loud. I would say Hovis' tone of voice would be more of an appealing tone.

Q. Appeared to be trying to reason with Russell?

A. Yes, sir.

Q. Anyone else around that car during that time or after that time?

A. There might have been some few people near his car.

Q. See anybody else talking to him?

A. Not at that particular moment, no. Shortly after Hovis started talking to him, I don't know how long they talked; several minutes I would say, Pete Runager walked up to the side of the automobile and Pete also engaged in conversation with Russell.

[fol. 564] Q. Was that before Hovis left or about the time he left?

A. Before he left.

Q. He was still there talking or still beside the car when Runager went up there?

A. Yes, sir.

Q. You were on the south side of the street?

A. Yes, sir, on the south side, I would say approximately 15 feet back west of the picket line and when Russell came to a stop I was standing as stated on the south side of the street and half way between his right front wheel and his windshield.

Q. Did you hear any cries from the crowd or anything said out there while Hovis or Russell were talking, or while Runager and Russell were talking there at the car?

A. Yes, I heard someone yell, "Turn him over" and about the time that yell was made, somebody said, "Shut up."

Q. In your judgment, was the two statements made by the same parties or different parties?

A. Different persons.

Q. They come from the same vicinity?

A. Came from behind me and to my left in the crowd that was behind me and to my left.

Q. What did you observe then with reference to Russell or his action?

A. He was just sitting in his car, and due to the fact I was standing on the opposite side of the car and windshield and they were not talking loud, I didn't hear anything at all he said. I heard the voices.

Q. Did you hear any profanity on that occasion?

A. No, sir.

Q. Did you see Hovis or anyone else on that occasion seize hold or take hold of his car?

A. I didn't.

Q. Did you see anybody attempt or make any effort to over turn his car?

A. I did not.

COURT ADJOURNED UNTIL 9 IN THE MORNING.

JUNE 10, 1953.

Q. Mr. Dyer, did you see or observe anyone on that occasion do anything to the automobile of Russell?

A. I did not.

[fol. 565] Q. While he was down there on that occasion and in your presence, did you observe any molestation of him in any way?

A. I did not.

Q. Did anyone strike his car and put placard sticks against his car?

A. I did not.

Q. Did any of the men walking the picket line take their sticks they were carrying their signs on and stick toward his car?

A. They did not.

Q. In your judgment how long did he remain there after he had stopped on that occasion?

A. You mean after he had pulled within 10 or 15 feet of the picket line?

Q. Yes, sir.

A. I would say he sat there something like an hour; possibly a few minutes longer.

Q. During the latter portion of the time that he remained there, was anybody up in the immediate vicinity of his car talking to him or engaging in conversation with him?

A. Well, after Mr. Hovis and Mr. Runager stood and talked to him for several minutes, I would say he had been there thirty minutes and Starling walked up and started talking to him.

Q. How long did he remain after the conversation with Starling ceased?

A. I would say he sat there probably thirty minutes after Starling talked to him.

Q. Then what did he do?

A. He sat in the car all that time and after Starling came up and went to talking to him, he told the group to go away and don't bother talking to him.

Q. Did they do that?

A. They did, and after Mr. Starling had walked away from the car, all the boys left the car and he sat there something in the neighborhood of thirty minutes, backed up, turned around and left going in the direction of the city.

Q. During that time, you didn't observe anyone say anything to him or do anything to him on that occasion?

A. They did not.

Q. With reference to the operation of the gates out there, I believe you said you worked there since 1948?

[fol. 566] A. October, 1948.

Q. And worked there continuously up until the strike in 1951?

A. Right.

Q. You had gone through those gates and come out there every day during the time you worked there?

A. Yes, sir.

Q. Familiar with the operation and maintenance of them with reference to the opening and closing of the gates during that time?

A. I was.

Q. State to the jury what the policy or what the practice was followed there by the company with reference to the closing and opening of the gates prior to July 18, 1951.

A. It was the custom of the guards to come out of the guard house at the entrance to the plant and open the gate for car or cars, which ever it might happen to be. If there was one car there and that was the only car in sight, they would open the gate, identify the man, then close the gate and go back and sit down. That was just for the convenience of the guard more than anything else to keep him from having to stand. During the shift changes, one of the guards usually opened the gate and that gate remained open until everybody got outside of the plant.

Q. How about the other gate for the employees to enter the plant going on at the shift change?

A. As I said, if there was one car, they would open it and let that car through and if there were no more in sight, they closed it back and go back and sat down. If there was more than one car, they would stand there and keep the gate open until all the cars filed through and after that they would close it and return to the gate house.

Q. After July 18, 1951, date of the strike, was any change in the manipulation or operation of that gate system with reference to the entrance and exist of employees or personnel?

A. I would say it was.

Q. State what that was.

A. Those gates remained closed until someone approached the gate and when an automobile approached the gate, it was opened and that man let in and of course identified by guard and allowed to go on into the plant. If there were two or three cars, the gate opened, let them in and immediately closed again.

Q. Mr. Dyer, did you pay any initiation fees to become a member of the International Union you testified about?

[fol. 567] A. You speaking of initiation fees?

Q. Yes, sir.

A. Yes, sir, one dollar.

Q. Did you pay any dues after you affiliated with that organization?

A. I did not.

Q. On the morning of July 18th, did you see Mr. Oakes go up to the picket line near the entrance to the plant down there?

A. I did.

Q. About what time was that?

A. Around 7:25 or 7:30.

Q. At that time was he in his automobile or an automobile?

A. In an automobile.

Q. Alone?

A. He was alone, yes, sir.

Q. Going toward the gate or entrance of the plant?

A. He was.

Q. What did he do on that occasion?

A. He stopped and asked for Duncan.

Q. And you knew Duncan at that time?

A. I Did.

Q. What did Duncan do?

A. Duncan and Hoyt Grizzard walked up to the side of the car and talked to Oakes.

Q. Tell the jury in your best judgment about how long that conversation between Oakes and Duncan lasted there on that occasion.

A. It only lasted for a few minutes. I would say the conversation lasted over maybe five or six minutes.

Q. Did you understand or hear any part of the conversation?

A. I didn't hear any part of the conversation. I knew they were talking between themselves and I was informed later as to the nature of the conversation.

Q. After the termination of the conversation, what did Duncan do immediately?

A. Duncan informed the boys there on the picket line as to what Mr. Oakes had told.

Q. What did he tell you?

A. Mr. Oakes told him he forgotten to inform him the next day as to how the salaried employees could be identified. Oakes showed him a card with a picture and number on it that ranged between two and four thousand and that [fol. 568] was the way the salaried employees would be identified and that they would show those cards on approaching the picket line.

Q. Sometime after July 18th and during the progress of the strike out there, did you see Mr. Breeding and talk to him on that occasion?

A. Tommy Breeding?

Q. Yes, sir.

A. Yes, sir.

Q. Where was that?

A. Right in the vicinity of the picket line.

Q. You recall what date that was with reference to July 18th?

A. I would say that it was shortly after July 18th, because my best recollection Mr. Breeding had one of his children with him to the best of my recollection.

Q. Who was present, besides you, Breeding and the child?

A. I do recall Grizzard being there; that is the only man I recall being there.

Q. Was that in the immediate vicinity of the picket line?

A. Yes, sir.

Q. About what time of day or night did that occur?

A. Sometime between eight in the morning and 11 o'clock in the day.

Q. What did Mr. Breeding say to you and you to him on that occasion?

A. We were just talking about things in general; things pertaining to what we believed about organized labor, and he was talking about things he didn't believe in. He went on to state, during the course of the conversation, that if Oakes notified him to come back in that plant and go to work that he would go back in that plant and go to work if he had to splatter blood and guts all over that plant.

Q. He one of the plaintiffs in these several suits?

A. I believe he is. There's so many, I don't recall; I didn't memorize them.

Q. You know Burl McLemore?

A. Yes, sir, I do.

Q. Did you know him on July 18, 1951?

A. I knew him for a considerable length of time before that.

Q. Did you see him there that morning?

A. At the picket line, Yes, sir.

Q. Did you see him before or after you saw Paul Russell?

A. After I saw Paul.

Q. Did you see him before or after Paul left the picket line?

[fol. 569] A. Before Paul left.

Q. After he had got there?

A. After Paul got there, yes, sir.

Q. Tell the jury under what circumstances and conditions you saw Burl McLemore on that occasion; what did he do and say?

A. As I stated yesterday, I was on the south side of the road approximately, I would say, between 10 and 15 feet west of the picket line and when McLemore drove up, and he did drive up a little faster than anyone else had driven up that morning, he pulled in the entrance to the flour mill and when he jumped out of the car, he had his lunch in his hand. He said to his son, "Take off. Take off." He said that twice.

Q. Someone remaining on the front seat?

A. His son.

Q. What did his son do immediately?

A. His son got under the steering wheel, turned around and left the vicinity of the picket line.

Q. What did McLemore do?

A. He walked from the north side of the road over into the crowd on the south side of the road, I would say, 30 feet or better from the picket line.

Q. Over in the vicinity of where you were standing?

A. I was over in the crowd I would say about 45 feet from where he stood.

Q. He back west from where you were standing?

A. Yes, sir.

Q. Go ahead.

Q. He walked across the road with his lunch in his hand, walked off the pavement into the crowd over there and several of the fellows walked up and started talking to him. I was standing off too far to hear anything that was said.

Q. You didn't understand the conversation?

A. No.

Q. Did you identify the boys talking to him at that time?

A. If I remember correctly, there was Pete Runager. Ralph Webster walked up about that time. Those are the only people I could be positive about.

Q. Did you see McLemore have a conversation with either of the defendants in this case prior to the time he got out of the automobile on that occasion?

[fol. 570] A. I saw him talking to Pete, Ralph and the other boys in the crowd.

Q. That before he got out of the car?

A. After he got out of the car and walked on the south side of the road.

Q. Did he have a conversation before he got out of the car?

A. He couldn't have possibly had a conversation with anybody on the picket line or in the vicinity of the picket line before he got out of the car. Immediately when he got out, he told his son to take off; said that more than one time. He jumped out of the car and walked over in the road 15 feet from me. After he stood and talked to those boys a few minutes; I don't know how long, probably, I know, 15 or 20 minutes, I distinctly remember seeing him hand Ralph Webster his lunch.

Q. Then he gave Webster his lunch?

A. Yes, sir.

Q. He made a statement at that time?

A. He said something to Ralph, but I wasn't close enough to understand it.

Q. He gave Webster his lunch?

A. He did.

Q. Then did he leave or walk back toward, rather from the picket line, walk west toward town?

A. He was plumb swallowed up in the crowd. I didn't see him any more that day. I didn't see him any more.

Q. Did you see Mr. McLemore out there after that occasion? During the course of the strike?

A. Yes, sir, I did.

Q. About, with reference to July 18th, when was the next time you recall having seen him there at the picket line or in that vicinity?

A. I believe that was on Friday following the strike on Wednesday.

Q. About what time of day did you see him there then?

A. He came there sometime after one o'clock in my best judgment. I would say between one and one-thirty.

Q. Where were you with reference to the picket line when you first saw him on that occasion?

A. On the south side of the road somewhere in the vicinity of 10 or 15 feet from the picket line west of the picket line.

Q. Was he walking or riding?

A. Walking when I saw him then. If he drove his automobile, he parked some distance from the road. I didn't observe him approaching the picket line.

[fol. 571] Q. Walking on the paved portion of the street when you saw him?

A. Yes, sir.

Q. Did he have a conversation down there in your presence with some of the other boys on that occasion?

A. He had a conversation with Pete Runager and Howard Hovis.

Q. Did you hear the conversation?

A. Not at the time he was talking with Pete.

Q. Did you hear the conversation with Hovis?

A. I heard them talking from my position, but they were not speaking loud enough to be distinct to me.

Q. About how far was he from you at that time?

A. He was at least 10 or 15 feet from me. I don't think I ever got any closer to McLemore than that. I don't think he got closer to me.

Q. You heard him testify earlier in this case?

A. I did.

Q. You heard his testimony with reference to the state-

ment you made on that occasion with regard to the injury of his hand?

A. That's right.

Q. I will ask you if you said in substance what he said you said?

A. What he said that I said isn't true. I didn't say that.

Q. As a matter of fact, did you use any profanity at all?

A. I did not.

Q. Did you curse?

A. I did not.

Q. What did you say on that occasion, if anything?

A. Well, I don't recall the exact words, but when he came out there that morning, we all knew he was coming for the purpose of getting his cover-alls, at least that was my understanding, and after he got out there, he mentioned something about having an injured hand.

Q. Did you hear him say that?

A. Yes, sir.

Q. To whom was he addressing his remarks at that time?

A. He was talking with Pete.

Q. Runager?

A. Yes, sir.

Q. You were about how far from them at the time?

A. At the time he was talking to Pete and Hovis, they were about 15 or 20 feet from me, and the nature of the conversation as it took place to begin with—

[fol. 572] Q. When he was talking to Pete Runager about his injured hand and going into the plant there to get some first aid for that injury, did you hear that conversation?

A. No, sir, I didn't hear McLemore say anything about the injured hand. I heard one of the boys saying something about his injured hand.

Q. That was while he was there?

A. Yes, sir.

Q. While he was talking to Runager or about that time?

A. I presume he did mention the injured hand to Runager.

Q. Was he in the vicinity of Runager and Hovis at that time?

A. He was.

Q. Did you make a remark on that occasion about getting Dr. Bragg to treat his injured hand, in substance that?

A. I did.

Q. Tell the jury just exactly what you said.

A. "Why couldn't Dr. Bragg dress his hand. That is what they are paying him for."

Q. Is that your remark you made?

A. That is exactly the substance of what I said. That might not be word for word, but it is the substance.

Q. I will ask you if in the course of the statement, you used the profanity he testified you used when he was testifying up here?

A. I didn't use the profanity.

Q. As a matter of fact, did you use profanity at all?

A. I do not use profanity in that form at all.

Q. How long did you say you had known the plaintiff Russell?

A. Mr. Russell—I became acquainted with him shortly after I went to work on October, 1948.

Q. You have any ill-will or malice toward him this morning?

A. I hold no ill-will or malice in my heart toward any man.

Q. Did you have any ill-will or malice toward him on July 18, 1951?

A. I did not.

Cross examination.

By Mr. Wilkinson:

Q. Did you continue to picket after July 18th?

A. I was there some time during the day most every day thereafter; yes, sir.

Q. Did Mr. Hovis issue passes to people to pass through the picket line?

[fol. 573] A. I had some understanding that was the procedure, but to say a pass was written or see anybody receive a pass, I didn't see that take place.

Q. Who were the people to whom these passes were issued to go through the picket line?

A. It was my understanding that the hourly rated employees who went into the plant would be issued a pass.

Q. If a man went in to get his pay or for any purpose other than working, he was required to get a pass to pass through the picket line?

A. That was my understanding.

Q. Hovis one of the men that issued passes?

A. Yes, sir. I didn't see any such transaction as that take place.

Q. You say you were not paid cash. Did you get groceries and financial assistance while on strike?

A. Yes, sir.

Q. You were a member of the committee to allocate assistance to the other members of the union?

A. We were not allocating assistance. Our purpose was to take the notes or mortgage payments or anything else that was due, doctor bills.

Q. You reported to the union how much they should pay on your recommendation for the other members out on strike for various purposes?

A. The boys understood they were to check with me or some other member of this committee in reference to the obligations they owed, that is on the things I mentioned earlier and other things of that nature, and that was turned into the office and paid by check.

Q. You say "turned into the office". You mean in Decatur?

A. Yes, sir.

Q. Who was in charge of the office, Volk?

A. Yes, sir.

Q. Who issued the checks?

A. Volk usually issued the checks. He wrote the check. No one else wrote any check to my knowledge.

Q. How often was Volk up here in Decatur during the strike?

A. He was here quite regularly. There were times in between there that Volk probably went home or out of town some other place.

Q. He lived in Birmingham?

A. Yes, sir.

Q. He was here practically all the time?

A. I would say he was.

[fol. 574] Q. And before the strike started on July 18th, what period of time was he here?

A. Mr. Volk, the very best I can remember, he began to come to Decatur either some time in June or sometime, I would say sometime in June, the latter part of May or the first of June.

Q. He came up here about the time you submitted the proposal to the company, didn't he, sometime the latter part of May?

A. I don't remember seeing him here at that time. It is possible that I wasn't at the gathering where he appeared.

Q. If you can, tell us about when you first observed him here and how frequently he was here.

A. I became acquainted during the latter part of May or first of June and he was here several times during that month. I don't know just how many times, probably once or twice a week probably.

Q. From the time you saw him until the strike took place, he was here a good deal?

A. Yes, sir, he was.

Q. I believe you said you noticed Mr. Oakes at the picket line on the morning of July 18th about 7:25 or 7:30?

A. That's right.

Q. You heard him call for Duncan?

A. I didn't see or hear him call for Duncan.

Q. Didn't you say you heard him ask for Duncan?

A. He asked for Duncan. I was informed he asked for Duncan.

Q. Did you hear him ask for Duncan?

A. I didn't.

Q. Did you see Duncan go to him?

A. Yes, sir.

Q. You say he and Duncan conferred?

A. I did.

Q. That occurred at the picket line?

A. A short distance west of the picket line; that's right.

Q. What side of the road is the flour mill on?

A. On the left side of the road.

Q. Which side of the road is that?

A. North side.

Q. The north side. The railroad on the south side of the road?

A. That's right.

Q. The railroad that parallels Railroad Avenue on the south side?

[fol. 575] A. That's right.

Q. Mr. Duncan and Mr. Oakes had that conversation on which side of the road?

A. South side of the road.

Q. That the opposite side from the flour mill?

A. That's right.

Q. You didn't hear that conversation?

A. I didn't. I could hear the voices but I couldn't understand the words used in the conversation.

DEFENDANTS REST

HOWARD HOVIS, called in rebuttal by the plaintiff, testified:

By Mr. Wilkinson:

Q. While the picket line was in progress and in the early part of the picketing—you know a man by the name of Robert Scruggs?

A. Yes, sir. I just now remember that name. I saw him coming in the court room.

Q. He in the court room now?

A. In the witness room.

Q. Did you write him a pass giving him permission to pass the picket line to pick up his check in the front office?

A. I don't remember writing a pass, but I remember him being in the vicinity of the picket line because he was sitting in the car with a man that I knew. I talked to him.

Q. Did he ask for a pass?

A. I don't remember.

Q. Did you sign a pass for him?

A. I could have but I don't remember writing a pass.

Q. You could have but you don't remember?

A. No, sir, I don't.

Q. You don't remember delivering one to him?

A. I don't remember delivering one to Mr. Scruggs.

Q. (Indicating) Mr. Hovis, look at this card and tell us if that signature on there is your signature?

A. Yes, sir, that's my signature.

Mr. Wilkinson: We offer that in evidence as Plaintiff's Exhibit "11".

Mr. Adair: No objection.

[fol. 576] Said Exhibit "11" for the plaintiff is in the following words and figures, to-wit:

"ROBERT SCRUGGS

HAS PERMISSION TO PASS PICKET LINE TO PICK UP CHECK
AT FRONT OFFICE.

/s/ Howard Hovis."

FRANK W. OAKES, next witness for the plaintiff, in rebuttal, being first duly sworn, testified:

Direct examination.

By Mr. Wilkinson:

Q. Mr. Oakes, what are your initials?

A. F. W. "F" for Frank.

Q. Frank W. Oakes?

A. Yes, sir.

Q. Are you connected with the copper plant?

A. I am.

Q. Are you the same Frank W. Oakes who was called to the witness stand by the defendants a few days ago and not examined?

A. I am.

Q. Were you subpoenaed by both sides in this case to bring in certain documents in writing?

A. I have been subpoenaed in that manner.

Q. Do you have with you the writings and documents you were subpoenaed to bring into court?

A. I do.

Q. Will you let me see them, please, sir? In that envelope?

A. Yes, sir.

Q. Where is your subpoena and let's see what they subpoenaed and what we subpoenaed? You were subpoenaed by the defendants to bring in that certain petition signed by Paul S. Russell, Burl McLemore, James T. Kirby and other persons requesting Calumet & Hecla to reopen the Decatur plant and delivered by Norman W. Harris, attorney on or about August 18, 1951. Do you have such petition?

A. I do.

Q. Is that the petition you hold in your hand?

A. This is the original. I hold in my left hand a faithful photostat reproduction which I ask the court's permission to surrender if it became necessary.

[fol. 577] Q. The second item on the subpoena duces tecum for the defendants is that certain letter written by attorney Norman W. Harris to Calumet & Hecla Company and delivered to the company together with the aforesaid petition on or about August 18, 1951. Do you have the original and also a photostat of that document?

A. I do.

Mr. Wilkinson: We offer in evidence, if the court please, the originals and ask leave for the witness to substitute the photostatic copy so the originals may remain in the company files and records.

Mr. Adair: If we may inspect them?

Court: The original may be offered and then may be substituted. The jury will be authorized to first look at the original and then they can take the substitute to the jury room with them.

Mr. Adair: No objection.

Mr. Wilkinson: If the court please, may I pass the original to the jury and ask the clerk to have these papers to be braded together so they may have one exhibit number which will be Exhibit "12" for the plaintiff.

STATE OF ALABAMA,
MORGAN COUNTY.

I hereby certify that the letter and petition offered in evidence by the plaintiff as Exhibit "12" is not copied into this record for the following reason: Said petition is com-

posed of some 30 pages; that each page is signed by various and sundry individuals in their own handwriting, being over two hundred in number; that some of the signatures are illegible and of such nature that they cannot be copied into the record; that I have this day placed said Exhibit "12" in the hands of the Clerk, to be forwarded with the record in this case.

Witness my hand, this August 24, 1953.

Sarah C. Dutton

Mr. Wilkinson: With the court's permission, I return the original to the witness.

Q. Mr. Witness, those are the documents you were summoned by the defendants to produce here?

A. They are.

Q. You were also subpoenaed by the plaintiff to bring in [fol. 578] certain instruments of writing purporting to be the proposal for the union contract. Do you have that document with you?

A. I do, in the form of a photostatic copy of the proposal as presented to me by Mr. Duncan.

Q. This is a photostat copy of the original?

A. It is.

Q. Do you have the original?

A. I have it in my file.

Q. You had it phot-stated and brought the photostat to court?

A. I had a photostat made at the time of negotiations in order to have copies to work with with the members of the management team in the sessions.

Q. Is that photostat a true copy and exact copy?

A. Yes, sir, it is a true copy. There are some marginal notations that have been added.

Q. Private memoranda for your own use?

A. It is.

Mr. Adair: May I have the witness on voir dire?

Mr. Adair: This document—I don't believe you have it marked yet—this document purports to be a photostat of the first proposal the union made to the company?

A. It is.

Q. Mr. Adair: I noticed on almost every page of this document, a lot of pencil notations and comments and markings throughout. Those pencil notes and markings and comments were not on the original proposal you received?

A. Not as I received it. The notes and comments were developed, the marginal notes added on there during the period of discussion.

Q. Mr. Adair: Did any representative of the employee bargaining committee put those notes on there?

A. They did not.

Q. Mr. Adair: Duncan put them on there?

A. He did not.

Q. Mr. Adair: Who put them there?

A. Ed Bowden.

Q. Mr. Adair: This isn't your writing?

A. It is not my writing.

Court: Who did you say?

Witness: Ed Bowden, George Edwin Bowden, Jr., a [fol. 579] member of the management negotiating team.

Mr. Wilkinson: I may say in that connection, we don't contend the pencil markings are admissible in evidence. They were made independent and subsequent to the original contract as I understand, and we do not offer them, but if there are objections, we will ask leave to have them erased.

Mr. Adair: I don't request that. We wanted to make it clear the notes were not on the original contract as tendered to Mr. Oakes, but were put on and made by some company representative.

Witness: That is true.

Mr. Adair: I believe we have no objection.

Mr. Wilkinson: We offer in evidence as Plaintiff's Exhibit "13" the document identified by the witness.

Court: Jury, there are some pencil memorandum, marks on here that were made following the delivery of the document. They are not offered in evidence. They are not to be considered by you as a part of the evidence. You consider that part as it was when it was originally offered, that is, without those erasures, changes, alterations or memo.

PLAINTIFF'S EXHIBIT 13

Said Exhibit "13" for the plaintiff is in the following words and figures, to-wit:

"AGREEMENT"

"THIS AGREEMENT made at Decatur, Alabama, this..... day of, 1951, by and between the Wolverine Tube Division of Calumet and Hecla Consolidated Copper Company, a Michigan Corporation, the Division having its place of business in the City of Decatur, Alabama (hereinafter called the "Company"), and the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, and its local No. 68, UAW-CIO, (hereinafter called the Union").

ARTICLE I**RECOGNITION**

Section 1. The Company recognizes the Union as the sole and exclusive bargaining agent for all of its hourly rated employees of the Decatur, Alabama Plant of the Wolverine Tube Division, for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment and other condition of employment as outlined in the certification of the National Labor Relations Board Case No. 10-RC-616 and 10-RC-1346.

[fol. 580] *Section 2.* This Agreement shall not include salaried employees or persons whose duties are managerial or confidential in their nature.

Section 3. The Company reserves the right to direct the working force, including the right to hire, suspend or discharge for proper cause, promote or transfer, and right to relieve employees from duty because of the lack of work or other legitimate reasons providing these rights are not used for purposes of discrimination, or in violation of any of the provisions of this Agreement.

Section 4. The Company will not interfere with the right of employees to become members of the Union, nor will it use coersion; discrimination or restraint against any member on account of such membership.

Section 5. The Union agrees that neither the Union nor its members will intimidate or coerce employees at any time; nor will it solicit members during working hours.

Section 6. MAINTENANCE OF MEMBERSHIP. All employees who are members of the Union in good standing in accordance with the Constitution and By-laws of the Union and all employees who hereafter become members shall, as a condition of employment, remain members of the Union in good standing for the duration of this Contract. This provision is subject to an affirmative vote in an NLRB conducted election at a later date.

Section 7. CHECK-OFF. Effective with the first pay day of the month next succeeding the execution of this Agreement, any employee covered by this Agreement may file with the Company voluntarily a written request directing the Company to deduct his Union

(end of page 1)

dues, initiation fees, and assessments approved by the International Union, and pay them over to the Union official so designated in writing by the Union.

This authorization shall be irrevocable for a period of one (1) year or until the termination of this collective agreement between the Company and the Union, whichever occurs sooner, with the right of revocation as shown in the copy of the authorization card following.

VOLUNTARY CHECK-OFF AUTHORIZATION

To the Wolverine Tube Division:

I hereby assign to Local Union 68, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, (UAW-CIO), from any wages earned or to be earned by me as your employee at the plant located in Decatur, Alabama, initiation fees, dues, and uniform assessments approved by the International Union and remit same to the proper official of the Union, as designated in a signed statement by the Local Union officers.

This assignment and authorization shall be effective from the date of signing this Agreement and shall be irrevocable

for the life of the contract or for the period of one (1) year, whichever occurs sooner. I agree and direct that this assignment authorization shall be automatically renewed and be irrevocable for successive periods of one (1) year each or for the period of each succeeding applicable collective agreement between the Company and the Union, whichever shall be shorter, unless written notice is given by me to the Company and the Union not more than twenty (20) days and not less than ten (10) days prior to the expiration of each period of one (1) year or of each applicable collective agreement between the Company and the Union, whichever occurs sooner.

Notifications of the dates of such ten (10) days revocation period shall be by posting of notices by both the Company and the Union of their respective bulletin boards.

(end of page 2)

Print Employee Name here.

Date

Clock No.

Signature here

Section 8. Non-payment of assessments levied by Local Union No. 68, other than monthly dues and initiation fees, shall not be construed as affecting the good standing of the employee insofar as disciplinary action on the part of the Company at the request of the Union is concerned.

Section 9. The obligations outlined in the International Constitution regarding International or Local Union No. 68 assessments shall be construed as mandatory to the continued good standing of the employee.

Section 10. The Union shall monthly furnish to the Company a list of additional members. If any employee on that list, within fifteen (15) days after deduction is made, asserts that he is not a member, or if thereafter a dispute arises as to whether an employee is or is not a member of the Union in good standing, the question shall be adjudicated by an arbitrator appointed by the American Arbitration Association, whose decision shall be final and binding on the Union, the employee, and the Company.

Section 11. PRINTING AND DISTRIBUTION OF CONTRACT. The Contract shall be printed and distributed by the Company to each employee on the payroll on signing of the Contract as well as to each person who is hired or rehired; contract to have union label.

ARTICLE II

[fol. 582]

REPRESENTATION.

Section 1. The employees shall be represented by a Steward System consisting of (number to be agreed upon in negotiations) members, one of whom shall serve

(end of page 3)

on the midnight shift. The Bargaining Committee of five shall consist of three executive officers of the Union, plus any two Union members. Notice of their selection shall be promptly given to the Company. Prior to any grievance meeting as hereinafter stated, the Union after filing agenda with the Company for the grievance shall specify the stewards who are to act at said meeting. Stewards shall confine their duties to the districts which they represent.

Each of the following districts shall be entitled to the number of stewards set opposite the respective districts, as follows: The districts and number of stewards to be agreed upon in negotiations.

ARTICLE III

GRIEVANCE PROCEDURE

Section 1. It is the intent of the parties to this Agreement that the procedures set forth herein shall serve as a means for the peaceful settlement of all disputes that may arise between the parties as to the application, interpretation or as to the compliance of either party with any of its obligation under this Agreement. A complaint by any employee or employees regarding wages, hours of work or other conditions of employment which does not involve any attempt to add to, subtract from, or change the terms of this Agreement, shall be considered and every effort be made to settle it through the procedures outlined herein.

Should any grievance arise between employees or the

Union and the Company regarding the interpretation or application of any provision of this Agreement, the same shall be taken up in accordance with the following procedure:

STEP 1. An employee may take it up with his immediate foreman alone or through his Shop Committeeman assigned to his area, and an earnest effort will be made by both parties to settle the grievance. Failing to settle the matter by this procedure, the grievance shall then be reduced to writing on forms provided by the Company and signed by the employee(s) and a copy given to the employee's foreman, who shall answer it in writing within one (1) working day.

(end of page 4)

STEP 2. If the grievance is not adjusted in Step 1, the foreman will be so notified within three (3) working days, and it may then be referred to the Shop Committee, who will [fol. 583] take it up with the Works Manager, and/or the Personnel Supervisor in an attempt to adjust it. Any grievance of plant-wide concern shall be presented in Step 2. Meetings will be held weekly except in cases when it is mutually agreed that an urgent or emergency condition exists, in which case a meeting should be held at the earliest practicable time. Written answers will be given within (2) working days to all grievances in this Step.

STEP 3. If the grievance is not adjusted in Step 2, it may within five (5) days of receipt of the answer be referred by either party to an Appeal Committee composed, for the Company, of the Director of Labor Relations, and the Works Manager, and for the Union, of a representative of the International Union and a member of the local Union. This appeal Committee will meet at as early a date as practicable and an answer given within three (3) working days of such meeting.

Members of the Shop Committee will be permitted to leave their work during working hours for the purpose of adjustment of grievances and meeting with management after notifying their foreman. The Committee will be paid their regular rate for all hours spent in handling of grievances and attending committee meetings with Management.

International Representatives of the Union may attend any meetings between Management and the Committee at the request of either party.

Any decision not appealed within the time limits above specified shall be considered settled on the basis of the last decision rendered.

STEP 4. In the event any grievance is not satisfactorily resolved by the above procedure, it may be appealed by either party to Arbitration by giving written notice of such appeal to the other party within twenty (20) working days after the decision in Step 3 is rendered unless this time limit is extended by mutual agreement of the parties.

(end of page 5)

If arbitration is requested as above provided, the parties shall request the American Arbitration Association to submit an identical list of arbitrators to each of the parties and each party will strike said list and return same to the Association. The American Arbitration Association will then proceed to appoint an Arbitrator and conduct the arbitration proceedings under the Association rules then obtaining. The decision of the Arbitrator shall be final and binding on each party. Such arbitrator shall hear and determine the dispute or controversy as promptly as possible and shall issue findings or award a decision in writing. Such decision shall be within the scope and terms of this Agreement; and the authority of the Arbitrator shall [fol. 584] be limited to interpretation, application, or determining compliance with the provisions of this Agreement, but it may not add to or detract from or in any way alter the provisions of this Agreement. The establishment of wage rates shall not be subject to arbitration.

The parties shall share equally the expenses of the Arbitrator. Committeemen and employees called by the Union as witnesses will be afforded time off from work to attend arbitration hearings provided the company is advised twenty-four (24) hours in advance to obtain replacements.

No member of the Shop committee will be laid off during his term of office as long as there is work available which they are capable of performing.

Any employee(s) called before Management for disci-

pline may have his Committeeman present at the employee(s) request.

DISCIPLINARY PROCEDURE: When an employee is disciplined, or discharged, the Industrial Relations Department or the Night Superintendent shall advise him and the Committeeman of his shift, of the reason therefor and he may confer with his Committeeman of his shift before leaving the Plant.

(end of page 6)

If the Committeeman determines that such disciplinary action shall be made the subject of a grievance, then the regular grievance procedure shall apply, and such grievance shall be filed in writing, on forms furnished for that purpose, with the Director of Industrial Relations within not more than twenty-four (24) hours thereafter, Saturday, Sundays and holidays being excluded in such computation. Such grievance appeal shall not operate as a stay of the suspension or discharge. If a satisfactory settlement is not reached between the committeeman and the Director of Industrial Relations within twenty-four (24) hours (as above defined), after the submission of such written grievance, then such grievance shall be referred to the Union's Grievance Committee and the Company's Labor Relations Committee within twenty-four (24) hours, to be dealt with in accordance with the grievance procedure at a special meeting between the Union's Grievance Committee and the Company's Labor Relations Committee, within twenty-four hours thereafter.

If the grievance has not been settled satisfactorily in the previous steps, it will proceed to Step 3 and Step 4 as outlined in the Contract.

Any employee who is reinstated after a discharge which is adjudged to have been unjust, will be returned to work on his regular job without loss of pay or seniority rights.

[fol. 585]

ARTICLE IV

SENIORITY

TYPES OF SENIORITY

Section 1. The following types of seniority are recognized as of the signing of this Contract:

Plant-Wide Seniority—This shall date from the last hiring date of the employee which has been followed by continuous service. (i.e. service unbroken by any of the actions listed in Section 5 of this article.)

(end of page 7)

Departmental Seniority—This shall be determined by the amount of time an employee has been on the records of the department. In case of reduction in force the employee's original department seniority shall accumulate but his seniority in any other department will be the actual time spent in these departments. In recalling, he shall be returned to his original department in line with his seniority.

Engineering Seniority—This shall date from the first day worked which has been followed by continuous service in the Engineering Section. The Engineering Section shall consist of Departments (numbers to be included)

EXERCISE OF SENIORITY

Section 2. Seniority will apply as follows:

*Lay-Off and Recall ** Plant-Wide Seniority shall be the determining factor in the Mill Sections (i.e. all departments other than those listed in the Engineering Section). In the Engineering Section, Engineering Seniority by group classification shall be the determining factor. If a reduction in force should become necessary in any group classification, the employee affected may exercise Engineering Seniority to displace an employee with less Engineering Seniority currently working in another classification in the Engineering Section providing he has more work experience recorded in such classification. Sweepers and janitors throughout the plant shall not be replaced in this manner. Employees transferred according to the provisions of the above shall be returned to their former group classifications in the event of an opening or an increase in force in such classification.

An employee who is reinstated after a layoff to an available job may not exercise his departmental seniority for a period of two weeks after his recall.

If an Engineering employee should not have enough Engineering Seniority to remain in the Engineering Sec-

tion, he may exercise his Plant Wide Seniority to claim a job in the Mill Section. Any skilled tradesman shall have [fol. 586] the option at the time his Engineering Seniority becomes insufficient to hold him in the Engineering Section of exercising his Plant-Wide Seniority or taking a lay-off.

(end of page 8)

If he should choose to take a lay-off he may not be recalled until his Engineering Seniority entitles him to return to work in the Engineering Section.

The following groups shall have interchangeable Seniority in the Engineering Section: (To be agreed upon in negotiations)

SHIFT PREFERENCE

In making shift assignments, the Company shall assign its longer-service employees to the shift of their preference within their occupational classification in their department except as hereinafter provided:

(a) The Company may assign the shortest-service qualified employee to any shift for the purpose of training inexperienced employees.

(b) Longer-service employees may be assigned by the Company to perform necessary work requiring certain qualifications which they possess to any shift, providing no shorter-service employee on such job possesses the qualifications necessary to perform such work on the shift to which the assignment was made. The Company agrees that such temporary assignment shall continue only until a qualified shorter-service employee can be trained to replace the longer-service employee.

An employee assigned to the shift of his preference in accordance with the provisions of this section shall not be given consideration for shift preference in making subsequent assignments for a period of three (3) months from the date of the original assignment except by agreement between representatives of the Company and the Union. Such assignments will become effective only at the start of the payroll week.

REDUCTION OR INCREASE IN DEPARTMENTAL FORCE

Departmental Seniority will ordinarily apply in cases of reduction or increase of force in any department in the Mill Section. Engineering Seniority will ordinarily apply in the Engineering Department as described in Section 1 of this Article. In effecting such increases or reductions the company shall have the right to take into consideration the ability of the employee concerned to perform the work which is available.

(end of page 9)

SENIORITY LISTS

Section 3. All new employees' names shall be placed on the Plant-Wide Seniority list sixty days from the date of hiring, it being understood that in the computation of such sixty-day period any time off voluntarily taken by such [fol. 587] employees shall be added to the sixty-day period. For the purpose of this Contract, all present employees' seniority shall stand as stated on the present approved master Plant-Wide Seniority list.

The Company agrees that up-to-date Plant-Wide Seniority lists shall be posted on the bulletin board and a copy furnished to the Union once in each six months during the continuation of this Agreement. Any employee objecting to the date stated respecting the commencement of his employment or his position on the seniority lists in force at the time of execution of this Agreement shall, within ten days of the posting of the lists, file his objection in writing with the Union Plant Chairman and his objection will be considered by the Labor Relations Supervisor and any member of the Bargaining Committee; and the matter shall be settled by them. Any employee not making objection within such ten-day period shall be deemed to have agreed to his seniority rating as disclosed by the lists and such lists posted shall be binding and conclusive for all purposes.

Departmental Seniority Lists shall be prepared and maintained by the respective department supervisors with the aid of the Labor Relations Supervisor.

DEVIATIONS FROM SENIORITY

Section 4. Union Deviations—Union Executive Officers, Bargaining Committee Members, and Stewards shall head the seniority lists during their terms of office. In the event of reduction in force, Union Bargaining Committee Members and Stewards will be the last hourly rated employees affected in their department or job classifications during their term of office. However, in the course of normal operations or increase in the working force it is understood that the above shall not restrict Union Bargaining Committee Members and Stewards from taking advantage of opportunities for promotion.

(end of page 10)

In these cases, the Union Bargaining Committee Members and Stewards shall utilize their actual seniority in the interest of job placement, other things being equal.

Company Deviations—When conditions warrant an increase or decrease in the number of employees, the Company shall re-employ or layoff according to seniority. However, in connection with such re-employ or lay-off, the Company shall have the right to take into consideration the ability of the employee to perform the work which is available. It is also understood that in connection with such employment the employee is to accept the wages applicable to the particular job.

The company reserves the right, when advisable in the [fol. 588] judgment of the Company, to deviate from strict seniority, to the extent of but not exceeding the total number of Union Executive Officers, Bargaining Committee Members, and Stewards. Not to exceed one-half of such employees may be probationary employees.

Deviations in the Engineering Department will be limited to the following job classifications and the number of employees specified for each:

1st Class Electricians
1st Class Millwrights
Tool Makers
Machine Repairmen

Section 5. An employee shall lose his seniority and right to be on the Plant-Wide seniority list if —

- (a) he quits;
- (b) he is discharged;
- (c) he does not return to work when called unless he notifies the Company within five days and furnishes a satisfactory reason for not returning;
- (d) he leaves the Plant without reasonable excuse or is absent for more than five days without notifying the Company.

(end of page 11)

All employees who are laid off through no fault of their own shall retain and accumulate seniority provided they report to the Employment Office in writing their desire and availability for work upon the expiration of the first year of lay-off and every three months thereafter. The Company agrees to give to the Union each month, the names of those so reporting. This report must be made during the last fourteen (14) days of the calendar month within which such date falls.

Section 6. Employees' names shall not be removed from the employment records for sickness, accident, nor for any reason beyond the employee's control, providing the employees notify the Company within ten days of the happening of such event and give to the Company a reasonable explanation with reference to such event, and every days thereafter, unless a definite time limit is given. Failure to report is sufficient cause for loss of seniority rights and/or discharge. Under exceptional circumstances where a man is able to prove he could not give notice within the time limits shown above, the Company and the Union will reconsider his status.

Section 7.

On written request in duplicate to the Labor Relations Supervisor, a leave of absence will be granted any employee [fol. 589] without loss of seniority rights under the following conditions:

- (a) Reasons for request are acceptable to the Labor Relations Supervisor in which case the Union Plant Chairman

shall be properly notified. Such leave of absence shall be for a minimum of four working days and a maximum of thirty calendar days.

(b) Upon being elected or appointed to Union Office and in the regular discharge of such duties, any employee will be granted a leave of absence not to exceed one year, which may be renewed upon written application.

(end of page 12)

PROBATIONARY EMPLOYEES

Section 8. Employees without seniority shall be regarded as probationary employees for the first sixty days of their employment. There shall be no responsibility for the re-employment of probationary employees if they are discharged or laid off during this period. After sixty days employment as described in Section 1 of this Article, the names of such probationary employees shall be placed on their respective seniority lists in order of date of hiring.

LAY-OFF AND REHIRING PROCEDURE

Section 9. Except as provided in Section 1 and 2 of this Article, in the case of a general layoff, the following procedure shall be followed in the respective two seniority divisions provided for in this Agreement.

(a) The regular work week shall consist of forty (40) hours before the following procedure is effective.

(b) All probationary employees shall be laid off first and their names removed from the payroll.

(c) Thereafter, all hourly rated employees having less than one years seniority shall be released, their names removed from the payroll, but they shall retain their seniority, except as provided in Section 4 hereof.

(d) The work week shall normally be considered to consist of forty (40) hours, it being understood that thirty-two hours per week may be scheduled for not more than a continuous thirty-day period.

Where job classifications and/or requirements are common to more than one department, several departments are to be classified as a unit for the purposes of this subsection. The procedure outlined above may be altered if mutually agreed upon by the Company and the Union. The Company agrees that affected employees will, whenever possible, be transferred to other departments.

(end of page 13)

(e) Thereafter, employees in the order of their seniority shall be released and their names removed from the pay [fol. 590] roll, but they shall retain their seniority, except as provided in Section 4 hereof, those with the least seniority being released first.

When conditions warrant an increase in employment after a lay-off as hereinbefore set forth, additional employees shall be returned to work in accordance with their seniority.

Section 10. The Company agrees to give at least twenty-four hours' notice of any layoff to the employee concerned and forty eight hours' notice of such lay off to the Union. The labor Relations Supervisor will supply a member of the Union Bargaining Committee with a list of the employees included in the lay-off. It is understood that no notice shall be required if temporary lay-offs are necessary because of emergencies.

Section 11. Any employee actively serving in the armed forces of the United States or absent because of enforced military training or enlisting, if induction is imminent, shall not lose his seniority status, but upon termination of such service shall be re-employed by the Company, provided he is physically able to perform available duties, is honorably discharged from service, and reports for work within 90 days after his discharge. If at the time he reports he is physically unable to perform available duties, a leave of absence will be granted, provided the employee produces a physician's certificate that his physical condition can be restored so that he shall be able to perform his duties. Employees who voluntarily enlist as a profession in any branch of the United States Service shall not be included within the

provisions of this paragraph. In the event of dishonorable discharge the Company and the Union shall review the circumstances as to his discharge.

(end of page 14)

Any employee whose draft is pending and who enlists in some branch of the service shall also be subject to the above provisions. In case of declaration of war, any employee leaving for military service, who has six months' seniority, shall receive seven days' pay or 56 hours (straight time), minus Federal, State and Local taxes, at his rate in effect at the time of leaving. Any employee on Military Leave at the time of declaration of war shall also receive this bonus.

Section 12. Employees who have given long and faithful employment service who become unable to continue in the performance of their work, and employees who have been physically handicapped as a result of serving in the Armed Forces, and employees who are physically handicapped as a result of an accident while on the job or disabled by an occupational disease while on the job, shall be given preference in suitable work in and about the plant, which work [fol. 591] shall be in keeping with their ages and physical ability. In placing any employee on any job due to a physical handicap, such job and shift placement shall be governed by mutual agreement by the Union and the Company as the case comes up and not governed by seniority.

UNDERSTUDY PROGRAM

Section 13. Notwithstanding the provisions of this Article, the Company shall have the right to select certain employees either from the hourly rated employees of the Company or from the outside for special training in the various processes of manufacture, sales, and distribution of the Company. Such understudies chosen from among the hourly-rated employees of the Company shall not exceed one per cent 1% of those entitled to seniority, and understudies outside the present hourly-rated employees covered by this Agreement shall not at any time exceed one per cent (1%) of the total number of employees entitled to seniority. Employees selected as understudies shall have the status of Management employees. The Company reserves the right

with respect to such employees selected for special training to establish and enforce such rules and regulations with respect thereof, as the Company shall determine. In the event the Company shall select any of its hourly-

(end of page 15)

rated employees for special training and it shall thereafter be determined that said employees are not suited for the position for which the Company contemplated training, the employees shall be returned to their original occupations and their seniority shall accumulate during the period of such training.

ADVANCEMENT TO MANAGEMENT POSITIONS

Section 14. The Company reserves the right to advance employees of the Company into clerical or other positions not covered by this Agreement. In the event that within one year after the advancement, the Company finds that it can no longer use the employee in such position, or determines that he is not fitted for that position, the employee shall be returned to the hourly pay roll with accumulated Plant-Wide seniority during the period he has been engaged in such other position. When advancing the employees to higher positions, the Company agrees to observe seniority, all other things being equal.

Section 15. Any employee exempted from this contract, as set forth in Section 2 of Article 1, may be transferred to general employee on application to the Labor Relations Supervisor, and on being transferred, shall be eligible to membership in the Union.

Such employees transferred to the hourly payroll will [fol. 592] have department seniority in an amount equivalent to the actual time which they have worked in the Department to which they are transferred. Their plant-wide seniority will be from their original date of hire.

Section 16. It shall be the duty of each employee of the Company to leave with the Industrial Relations Department his latest address and shall from time to time notify the Industrial Relations Department of any change in address. Any notice at any time required to be given to the employee shall be sufficiently given if sent by mail, postage prepaid, and addressed to the employee at the last address ap-

pearing on the Personnel Register and the Company shall not be responsible for the failure

(end of page 16)

of receipt of such letter by the employee; likewise, a telegram addressed to the employee at such address last appearing on the Personnel Register shall also constitute sufficient notice. If in the case of a lay-off or reemployment the Company expects to notify the employee by letter or telegram, the Company agrees to furnish to one of the Plant Union officers, or in their absence one of the Stewards a copy of the list of employees to be laid off or re-employed.

Section 17. The employees having the greatest seniority shall receive preference in making promotions or transfers to non-supervisory, higher paid jobs, or better jobs with equal pay. It is to be understood that senior employees shall in all cases be given first consideration in filling vacancies that may occur or in filling newly created jobs. In no case shall non-seniority or new employees fill such vacancies when a senior employee does the job.

Copies of all job transfers, authorizations, will be given to the chairman of the Bargaining Committee.

ARTICLE V

HOURS OF WORK AND OVERTIME PAY

The regular work week shall be given (5) days Monday through Friday inclusive. The day shift will be from 8:00 A. M. to 4:00 P. M.; the afternoon shift will be from 4:00 P. M. to 12:00 midnight; the midnight shift will be from 12:00 midnight to 8:00 A.M. The regular work day shall consist of eight (8) consecutive hours inclusive of a twenty (20) minute paid lunch period beginning with the regular starting time of the employee's shift.

TIME AND ONE-HALF WILL BE PAID:

(a) For hours in excess of eight (8) hours in any twenty-four (24) hour period starting with the beginning of the employee's shift.

(b) Four hours in excess of forty (40) per week.
[fol. 593] (c) For all hours worked on Saturday.

DOUBLE TIME WILL BE PAID:

- (a) For all hours worked before the employee's regular starting time.
- (b) For all hours worked on Sunday.
- (c) All hours worked on observed legal holidays.

It is agreed that overtime in excess of eight (8) hours per day or forty (40) hours per week will not be pyramided by overtime paid for Saturday and Sunday.

DIVISION OF OVERTIME:

Overtime shall be divided equally among the employees who are performing similar work in a group.

TARDINESS:

Section 1. A penalty of 1/10 of an hour will be given an employee who punches 'IN' from three to six minutes late. For tardiness beyond six minutes the regular procedure of six minute intervals shall apply; i.e. up to twelve minutes 2/10 of an hour/ up to eighteen minutes, 3/10 of an hour, etc.

HOLIDAY NOT WORKED:

Section 1. The Company will pay hourly rated employees for seven (7) holidays not worked if they occur during the employee's regular working schedules and if the employee meets the requirements listed below.

The seven (7) holidays are: New Year's Day, Memorial Day, July 4th, Labor Day, Armistice Day, Thanksgiving Day and Christmas Day.

Section 2. Hourly rated employees who have completed one (1) month of continuous service proceeding any holiday listed above are eligible for payment.

Section 3. The employees would have been scheduled to work if the day had not been observed as a holiday.

Section 4. The employee must have worked during the last scheduled work week prior to and the next scheduled work week after such holiday. However, such payment will be

made if the employee was absent due to Union activity, verified illness, emergency illness at home, death in family, or jury duty, or if he has been sent home during the week in which the holiday occurs

(end of page 18)

for lack of work.

Section 5. Payment shall be made for their regular working schedule of hours at their average straight time hourly rate. Employees receiving the night bonus will be paid the bonus on the holiday pay.

Section 6. If any of these holidays fall on Sunday, they will [fol. 594] be observed on the following Monday.

Double time pay on holidays worked means two times the employee's regular straight time earnings and does not mean two times the earnings plus eight (8) hours for time not worked.

Section 7. CALL-IN PAY An employee reporting for work on his regular shift or on the Company's instructions, but for whom no work is available, will receive four hours' pay at his applicable hourly rate, whether such conditions exists on a weekday, Saturday, Sunday, or holiday. The foregoing shall not apply if the day previous to the time when such employee was ordered to report, the Company shall have personally notified such employee not to work. This provision shall not apply when the lack of work is due to a labor dispute, fire, flood, or other causes beyond the control of the Company.

Section 8. When an employee begins work on his shift and (for reasons beyond his control) there is not sufficient work to complete his particular shift before he is sent home, he shall be offered substitute work at his regular rate of pay to the extent of at least four hours' time, inclusive of the time he has worked. In this connection, substitute work means any work within the reasonable capacity of the individual to perform. This stipulation will not apply where stoppages of work are due to a strike, or other major cause, beyond the Company's control.

BONUS

Section 9. BONUS FOR AFTERNOON AND MIDNIGHT SHIFT. (end of page 19)

All employees coming to work on the afternoon shift shall receive, in addition to their regular pay for the pay period, eight cents (8¢) per hour additional compensation and on the midnight shift twelve cents (12¢) per hour additional compensation. In the event an employee on the day shift shall work more than eight (8) hours in any one day and thereby becomes entitled to overtime, he shall not also be paid the eight cents (8¢) per hour bonus for working into the afternoon shift. The first four (4) hours worked on any one shift established the shift for the purpose of this paragraph. In any case an employee is called in at any time less than four (4) hours prior to his regular shift, he shall be entitled to work not only such additional time, but his full shift thereafter.

Section 10. Employees covered by this contract will be paid the same bonus rate for all hours paid for, as any other employee of the Company.

The wage rate for fractions of an hour shall be computed on the basis of tenths of an hour.

[fol. 595] *Section 11.* In the event that a general meeting of employees or group meeting of the employees shall be called by the Company, the hours spent in such meeting shall be considered as hours worked and shall be paid for as such. If an employee is called in to attend a general or group meeting by the Company upon any day on which he would not otherwise work, then he shall be entitled to pay for all of the hours spent at said meeting with a minimum of four (4) hours.

ARTICLE VI

WAGES, RATES OF PAY, JOB DESCRIPTIONS AND OTHER ECONOMIC ISSUES.

Section 1. The Company agrees to pay wages equal to wages paid for the same classification as they pay in their Detroit plant.

(1A) The Company agrees to make adjustments in wages based on the BLS Consumer's Price Index. Such adjustments to start after the signing of the contract.

Section 2. Job descriptions to be negotiated and made a part of this contract.

Section 3. Payment of wages due will be made by the Company on Tuesday of each

(end of page 20)

week. When a regular pay day falls on a day not worked, pay will be distributed on the preceding day

Section 4. Wage rates for the various classifications of work will be shown on "Schedules of Wage Rates on Job Classifications", and these schedules covering all jobs are attached as Appendix A. All new jobs coming into the plant during the life of this contract will be assigned a rate and will be added to the wage schedule. The wage rates as shown on the attached schedules shall be effective for the term of this Agreement. The determination of the rate for a new job will be made through negotiations between the Company and the Union on the basis of comparison of presently established jobs and rates. The Company will furnish the Union with job descriptions of all jobs presently in the plant and on all jobs as they are established. The job descriptions will be simple, concise and accurate. Any discrepancies may be challenged by the Union, and ensuing disagreements shall be handled by the regular grievance procedure.

Section 5. The Company agrees to a pension plan which shall provide a pension of \$125 per month for all employees who reach retirement age or have accumulated the necessary years of service. Such pension plan to be financed by the Company and administered jointly between the Company and the Union.

NOTE: (The Union will present further material regarding [fol. 596] the pension program in negotiations.)

Section 6. The Company agrees to a sick, health, accident and death benefit program to provide each worker and his

family with complete hospitalization, medical care, death and related benefits; such program to be financed by the Company and administered jointly between the Company and the Union.

ARTICLE VII

VACATIONS

Section 1. All employees upon the completion of one year, but less than three years, seniority, will receive one (1) weeks vacation—(40 hours).

(end of page 21)

All employees upon completion of three years, but less than five years seniority shall receive one-one half (1½) weeks vacation—(60) hours.

Upon the completion of five years or more seniority shall receive two (2) weeks vacation (80 hrs.), at their straight time hourly rate.

Vacation period to be by mutual agreement with the Union. Vacation pay to be at the time the employee goes on his vacation.

Employees leaving the Company for any reason including lay-off prior to their vacation period shall receive vacation pay at the time they leave in the amount of which their seniority entitles them as listed above which has accumulated to their credit since day of hire or their previous vacation.

ARTICLE VIII

GENERAL PROVISIONS

Section 1. Supervisory employees shall not be permitted to perform work on any job within the bargaining unit except in the following types of situations:

- (a) Emergency where regular employees are not immediately available;
- (b) In the instruction or training employees new to the job.

Section 2. No employee will be discriminated against be-

cause of race, creed, sex, religious affiliation, or national origin.

Section 3. Employees will be granted two rest periods of ten minutes each, in a regular eight (8) hour shift.

Section 4. All employees covered by this Agreement shall be given ten (10) minutes in which to clean up before the end of the shift paid for at their regular rate.

Section 5. Employees will be allowed to smoke on the job.

Section 6. UNION BULLETIN BOARDS The Company agrees to provide and maintain one master and Bulletin boards to be conveniently placed in such places as may be agreed upon the premises, for the purpose of posting notices [fol. 597] of Union meetings, Notices of Union appointments and results of Union elections, notices of union recreational and social affairs and other notices concerning bona fide Union activity.

(end of page 22)

such as cooperatives, credit union, and unemployment compensation information.

Section 7. SAFETY AND HEALTH. The Company agrees to maintain sanitary, safe and healthful working conditions in the plant, to equip all hazardous machinery with effective safety devices, to maintain precautions against exposure to occupational diseases and poisoning.

There shall be a Safety Committee composed of six (6) members, three (3) selected by the Company and three (3) selected by the Union with equal voice and vote.

The Company shall supply all employees whose duties require the use of gloves, with gloves, without cost to the employee, providing the employee returns the worn out gloves to the Company. The Company will furnish Safety glasses where needed.

Section 8. If it has been definitely established that an injury to an employee covered by this contract has arisen out of and in the course of employment and the employee is instructed by the First Aid Department to leave the plant in order to receive outside treatment and he returns

to work during the current shift, he will be paid for the time lost at the employee's regular rate. However, if the employee is physically unable to return to work because of the severity of his injury or if the employee upon his return to work presents certification from the outside doctor showing that he was ordered not to return to work, or if the injury occurs too late in the day for the employee to return before the end of the current shift, he shall be paid his regular rate for the time lost during the current shift.

Section 9. Employees covered by this agreement shall be permitted to work part time outside their regular jury service if such time falls within their regular schedule. Such employees shall be paid the regular straight time wages for such time actually worked. During the time employees with one (1) or more years of continuous service are absent on jury duty, the company will make up to them the difference, if any, between the jury pay and their regular straight time average earnings from the Company, provided the employees furnish the Company with a statement from the court with regard to pay received and hours spent on the jury.

(end of page 23)

Section 10. The Company agrees to furnish coveralls to all employees covered by this agreement and have same laundered at no cost to the employees.

Section 11. The Company agrees to make arrangements for [fol. 598] a cafeteria to be opened on the premises or furnish a hot lunch wagon so as to enable the employees to obtain a hot lunch at their lunch time on all shifts.

Section 12. If any provision of this Agreement shall be held invalid and in conflict with existing or future Federal or State legislation, the remainder of this Agreement shall not be affected thereby.

ARTICLE IX

MODIFICATION

Within sixty (60) days prior to 19....., and of any subsequent year, either party to this Agreement may present to the other proposed modifications or revisions of any of the provisions hereof and the reasons for such recommendations. Within thirty (30) days after notice is given, a conference shall take place for the purpose of considering such modifications or revisions.

(end of page 24)

ARTICLE X

TERMINATION

This Agreement shall continue in full force and effect for the period from 19..... until 19....., and thereafter from year to year, unless not later than sixty (60) days prior to any anniversary of the effective date of this Agreement, either party shall notify the other in writing of its intention to terminate the Agreement upon such anniversary date.

Date: 19.....
Decatur, Alabama.

**INTERNATIONAL UNION, UNITED
AUTOMOBILE, AIRCRAFT & AGRI-
CULTURAL IMPLEMENT WORKERS
OF AMERICA, C.I.O.**

WOLVERINE TUBE DIVISION

(end of page 25)

Q. You were also summoned by the plaintiff to bring the gate Register of July 17, 1951. What is the gate register?

A. The gate register is a large bound book of a considerable number of pages ruled in column form; provides

space for each person admitted to the plant (each person other than a plant employee entering at his regularly scheduled hours of work) to register for admission to the plant [fol. 599] property. On each page there is provision for his name, his connection or where he is from, the time he comes into the plant, who he wants to see, the time he leaves the plant property there.

Q. The gate register is a record that is kept at the gate?

A. Yes, sir, at the plant protection office at the entrance to the plant.

Q. And as a man comes in, that is put in the register?

A. The plant protection man puts down the time.

Q. Does he do that while the man is there?

A. Yes, sir.

Q. Then when he leaves, is the time recorded in which he left?

A. Yes, sir.

Q. Do you have that gate register of July 17th with you?

A. That is a bound volume of some size and kept in the vault of the engineering department after the page of a period of dates is covered. I have a photostat of the page I was requested to bring.

Q. That is not a looseleaf book?

A. No, a bound book.

Q. Will you let me see the photostat copy?

A. (Indicating) This is the particular date specified of July 17th.

Q. Is this register of July 17th, is it a photostat of the page of the register?

A. It is a photostat of the page of the register covering the period of July 17th, 1951; the entire date.

Mr. Wilkinson: We offer in evidence the document identified by the witness and marked Plaintiff's Exhibit "14".

Said Exhibit "14" is in the following words and figures, to-wit:

PLAINTIFF'S EXHIBIT 14

"7-17-51

"REGISTER"

Date Name	Representing	Street Address	City	Time of Ar.	Time of De-	Calling
						rival parture On

I ACCEPT THIS PASS SUBJECT TO THE FOLLOWING CONDITIONS:

1. I agree to interview only the individual or department designated on this pass.
2. I understand that any attempt to see person or departments other than those designated on this pass will be sufficient cause for the Plant Protection Department to request my removal from the premises of the Wolverine Tube Division.
3. In consideration of the issuance of this pass and in further consideration of the granting of permission to enter upon the premises, I agree that the Wolverine Tube Division shall not be liable under any circumstances for injury to my person or for any loss of or damage to property brought on to the premises by me, whether or not such injury, loss or damage shall occur by reason of the negligence of the agents of the Wolverine Tube Division.

[fol. 600]

27	Arlie Lee	Gary	R. I. Box d2	Dec	6:25	8:40	Helper
27	D. Safford	Toledo Scale Co.		Nashville	8:00	4:15	Service
52	Fred Foller	" "		"	8:00	4:15	"
55	Richard D. Bartlett	Self	Decatur, Ala.		8:00	8:10	To get check
55	J. B. Mullins	Self	-----		8:15	8:55	To get check
55	Chas. V. Honey	Iniden Cal.	Florence, Ala.		9:10	9:30	Shelbe
54	Ben Williamson	Willo Elec. Decatur			9:30	10:15	Schelbe
50	Robert Hodges	Decatur, Ala.	1519-3rd Ave.	Decatur	9:15	10:45	Helper, Drop trailer
55	S. D. Ullery	L. & N.R.R.	Decatur	Ala.	10:30	10:45	
55	U. U. Spark	Noland	Birmingham		11:15	11:45	Mr. Schelbe
50	Junior Garrison	Kimbliner			12:30	1:00	Helper
37	B. Shuler	Decatur		Ala.	1:05	1:15	Helper
55	M. T. Oden	Disco			1:10	1:25	Helper
60	Coates Norrell	Kelsoe			1:20	1:50	
51	C. A. Bradshaw				2:45	3:20	
	M. E. Duncan	UAW-CIO	95 Merritt Ave.	Atlanta	2:45	3:20	
	M. Volk	" "	B'ham, Ala.		2:45	3:20	
	D. H. Runager		Decatur		2:45	3:20,	
	H. B. Hovis		"		2:45	3:20	
	O. B. Drake		Decatur		2:45	3:20	
	Norman Ance		Decatur		2:45	3:20	

(page 2)

Date	Name	Representing	Street Address	City	Time of Arrival	Time of Departure	Calling On
26	C. Wheeler	Baggett	City		3:20	3:45	Helper
55	Norman Ange				3:20	3:45	To get check
56	D. H. Runager				3:20	3:45	---
54	Olen Drake				3:20	3:45	---
53	H. B. Hovis			Decatur	3:20	3:45	---
47	J. D. Dunn			"	3:30	4:15	Helper
26	B. E. Leonard	To get his things, clothes and badge			4:30	5:00	
27	B. Wheeler	Baggett	Decatur		4:50	5:05	Helper
26	J. Lyle	Baggett		City	5:00	5:20	Foreman
32	J. T. Rice	Hoover	"		5:05	5:20	Helper
26	J. E. Burns	To get clothes			9:15	10:05	
27	C. L. Beard	To get shoes			1:15	1:30	

Q. I see on this Exhibit 14 page of the register the name "M. Volk, UAW-CIO, B'ham, Ala." and what time does the register show he entered?

A. 2:45 o'clock in the afternoon of July 17, 1951.
[fol. 601] Q. What time does it show he left?

A. 3:20 in the afternoon.

Q. I will ask you whether or not you and some other representatives of the copper company (when I say copper company I mean Calumet & Hecla, Wolverine Tube Division) had a conference that afternoon around three o'clock with some representatives of the Union?

A. We did.

Q. Will you tell the jury who was present representing the company?

A. Present representing the company was A. S. Kromer (K-r-o-m-e-r), P. W. Robson, George Edwin Bowden, Jr., and myself.

Q. Will you tell the jury who was present representing the union?

A. Mr. M. E. Duncan, Mr. Mike Volk, David Runager, Olen Drake. I believe Carl A. Bradshaw, Norman Ange and Howard Hovis.

Q. Did you know Mr. Mike Volk, one of the defendants in this case, at that time?

A. Oh, yes, sir.

Q. Did Mr. Volk make any statement in that conference

about anything you can recall, and if so, tell the jury what statement he made.

A. I recall two statements that Mr. Volk made, one of them supplementing a statement made by Duncan and another statement which he made independently.

Q. Give us both statements.

A. Duncan had said that the union would admit management and salaried employees to the plant, that is, in the event of a strike, and Mr. Volk said, adding to that, "At least, at the start."

Q. "At least, at the start"?

A. Yes, sir.

Q. What was the other statement he made?

A. Mr. Volk said that they would keep this on a high plane.

Q. Mr. Oakes, did you or anyone representing the company make the statement to the representatives of the union at that time and place—did any of the representatives of the union inform you and your associates at that time and place that the plant would be struck at eight o'clock on July 18th?

A. No, sir.

Q. They did not?

A. No, sir.

Q. Did you or any of your associates state to the union [fol. 602] committee at that time and place that the company would lock its gates against hourly employees and not admit them to the plant?

A. No, sir.

Q. That statement was not made?

A. It was not made.

Q. How long did the conference last there between the representatives of the company and the representatives of the union approximately?

A. It must have been 25 or 30 minutes.

Q. Were you there from the time the conference started until the conference ended?

A. I was.

Q. Who was the Plant Manager at that time, who determined whether the plant would operate or not?

A. The principal official here in the plant was D. W. Blend.

Q. He was top man in charge?

A. Yes, sir.

Q. And what was your position with the company at that time?

A. I was Industrial and Public Relations Manager.

Q. You still connected with the company in that capacity?

A. I am.

Q. As Industrial and Public Relations Manager, did you have any authority to determine whether the plant would operate or not?

Mr. Adair: I object, Your Honor.

Court: That calls for a conclusion.

Mr. Adair: In addition to that (ADAIR) on the occasion he testifies about, he had Kroener sitting there with him.

Mr. Wilkinson: I will find out what authority all of them had.

Mr. Adair: It invades the province of the jury.

Court: The ruling of the court has been made.

Mr. Wilkinson: Reserve an exception.

Q. I will ask you whether or not you had been authorized or were authorized at that time to determine whether or not the plant should operate at any particular time?

A. Mr. Adair: We object to that on the ground that that invades the province of the jury. The facts of the whole situation would be the basis of a conclusion that he was authorized or wasn't authorized, but that certainly calls for a conclusion the way it is asked.

[fol. 603] Mr. Wilkinson: I understand the Supreme Court says you can prove the extent of an agent's authority by the agent himself.

Court: I assume that the authority of these representatives is a matter of corporate record and that is the best evidence.

Mr. Wilkinson: I don't know. I have never seen a corporate record.

Court: I think that calls for a legal conclusion and opinion of the witness. Upon that I sustain the objection.

Mr. Wilkinson: Reserve an exception.

Q. Were you at the picket line in the vicinity of the plant entrance on the morning of July 18th, the day the picketing started, about 7:25 or 7:30?

A. I drove on the street leading to the plant and drove to and through the picket line in approaching the plant on that morning.

Q. Did you stop and talk to anyone on that occasion?

A. I did.

Q. Who?

A. Mike Volk.

Q. Did you have a conversation with Mr. M. E. Duncan on that occasion at that time and place?

A. No, the place I talked to Volk was some little distance west of the picket line.

Q. And about how far west from the picket line did you have that?

A. 6 or 7 rods.

Q. How many feet is that?

Court: 5½ yards make one rod.

Q. You were about 6 or 7 rods?

A. I would judge that.

Q. How long did the conversation last with Volk on that occasion according to your best recollection?

A. Just a minute or so; very brief conversation.

Q. You did not have any conversation with Duncan at that time and place?

A. No, sir.

Cross examination.

By Mr. Adair:

Q. What is your title out there now?

A. Industrial and Public Relations Manager.

Q. Were you subpoenaed by the defendants in this case [fol. 604] to bring in certain documents we asked to be put in evidence which you saw put in evidence this morning?

A. Yes, sir, I was. In fact, I reported to this court with them last Thursday.

Q. That is correct and those documents which were asked for consisted of a letter from Norman Harris addressed to the company on August 18th?

A. That is the cover sheet, yes, sir.

Q. That is the letter?

A. Yes, sir.

Q. Signed by Norman Harris?

A. It is.

Q. And that letter requested the company to reopen its plant, did it not?

A. That is the wording of the letter.

Q. Is that right?

A. That is the wording of the letter.

Q. Is it also the wording of the letter, "I hope the company will be in position to grant this request to reopen"?

A. May I see it?

Q. Yes, sir (handing letter to witness).

A. As you gave it just now, there is a slight difference in the wording: "I hope that the company will be in position to grant their request."

Q. What was their request? Tell me what the request was.

Mr. Wilkinson: The jury has the letter and they will have it when they go out.

Court: The letter is the best evidence.

Q. Do you know whether or not these petitions that were attached to the letter also requested the company to reopen the plant for work?

Mr. Wilkinson: The petition is the best evidence; incompetent, illegal, immaterial.

Court: Sustained.

Mr. Adair: I wanted to ask what his understanding was.

Q. Was it your understanding it was requesting the company to reopen the plant for work?

A. The plant, having been closed by the strike, it was petitioned that the plant be reopened.

Q. These two documents I just referred to—the defendants here subpoenaed these, did they not?

[fol. 605] A. They did.

Q. And when you came up to the court room a few days ago, one of the defendants' attorneys, Mr. Goldthwaite, my law partner sitting there—do you know him?

A. Yes, sir.

Q. Did you talk to him on that occasion?

A. In the Judge's Chambers for a moment.

Q. On that occasion you talked to him about stopping at the picket line on the morning of July 18th?

A. And talking to Mike Volk I said.

Q. Did you not tell Mr. Goldthwaite on that morning in the Judge's Chambers that you talked to M. E. Duncan?

A. I did not.

Q. You positive?

A. I am positive of that.

Q. You didn't tell him M. E. Duncan stood there and you took your identification card and showed to Mr. Duncan?

A. I did not.

Q. Who did you talk to last night about this case?

A. What time?

Q. At any time.

A. I talked about this case some late in the day with some of my associates at the plant.

Q. Did you call them in and have a conference with them?

A. I don't recall having a conference.

Q. Did you have a conference on yesterday about this testimony in this case?

A. At the plant?

Q. Anywhere.

A. No, I did not.

Q. Did you sit in on any such conference?

A. I did.

Q. Who else sat in on it?

A. Mr. Robson, Mr. Kromer.

Q. They back there in the room now (witness room)?

A. Yes, sir.

Q. Where was that conference held?

A. In the offices of our company counsel.

Q. Who is the company counsel?

{fol. 606] A. Peach, Caddell & Shanks.

Q. Is Caddell in this case?

A. Not to my knowledge.

Q. Openly or otherwise? What's that?

A. Not to my knowledge.

Q. Did Caddell go over with you what your testimony would be here this morning?

A. I believe Mr. Caddell was out of the City yesterday.

Q. Who did you talk to in his office?

A. The counsel for the plaintiff.

Q. Who is that?

A. Mr. Wilkinson and Mr. Harris.

Q. What time of day was that?

A. After this court adjourned.

Q. I will ask you under oath whether or not you did stop at the picket line on July 18th and show your identification card to M. E. Duncan?

A. Under oath, I reaffirm I stopped before I got to the place of the picket line and talked to Mike Volk as his car was backing around in the road.

Q. Just answer my question. Did you talk to Duncan?

A. I did not.

Q. At any time on the morning of July 18th?

A. Your first question was—

Q. I am asking if you talked to him at any time on that morning? •

A. To the best of my knowledge, I did not. I do not recall talking to him on the morning of July 18th.

Q. Do you deny it?

Mr. Wilkinson: We object.

Q. You say you don't remember that. Did you show him your identification card?

A. No.

Q. To Duncan?

A. Positively not.

Q. You show Hoyt Grizzard your identification card?

A. I did not.

Q. You tell Duncan there was something you forgot to tell him the afternoon before?

A. You talking about the morning of July 18th?

Q. That's right.

[fol. 607] A. No.

Q. What morning did you talk to him?

A. I stopped at the picket line on July 19th, the day after the strike, and asked Duncan if they would call his negotiating team together and come in for a conference; that we had an important meeting we wished to discuss with them.

Q. Did you show him your identification card on that occasion?

A. I did not.

Q. Your testimony is that you did show Volk the card. Is that it?

A. Correct.

Q. You did tell him the salaried employees would have that card?

A. I did.

Q. You did tell him the numbers would be between two and four thousand?

A. Beginning with the two thousand series.

Q. You say you were told the afternoon before that the union committee, Volk said to you, "We will keep this on a high plane"?

A. That's right.

Q. Did you say anything to them you didn't want hard feelings between the groups; the strike would probably be settled one day?

A. In reply to the particular question—

Q. Just answer the question.

A. I don't recall that statement.

Q. Did you say something that amounted to that in substance?

Mr. Wilkinson: You referring to the three o'clock conference,

Q. That's correct.

A. I don't clearly recall such a statement.

Q. If you don't clearly recall it how do you recall it?

A. I do not recall it.

Q. You don't recall saying anything about keeping harmony between the groups?

A. No, I do not.

Q. You said you were in Caddell's office yesterday. I will ask you if Caddell is counsel for the company?

A. He is.

Q. He is not counsel for the plaintiff's so far as you know?

A. To the best of my knowledge, he is not.

Q. You don't know?

A. I told you, to the best of my knowledge, he is not.

[fol. 608] Q. You said Mr. Bowden is in the witness room there?

A. I did not say he was.

Q. Is he in the witness room?

A. No.

Q. You said he was at the conference on the 17th day of July at three o'clock?

A. Yes, sir.

Q. Has Bowden been up at the court house during this trial?

A. Not to my knowledge.

Q. You didn't send him to aid and assist Mr. Harris?

A. I do not believe Mr. Bowden has been at the court house. If he has been, it was not to my knowledge.

Q. You don't know whether or not he was outside arranging for the company witnesses on the first day of the trial?

A. He was not; to my knowledge, he was at the plant.

Q. Do you recall what representative of the company that you did have up here on that day in addition to Jerry Comer, who is sitting behind Mr. Harris—is he a company official?

A. He is.

Q. Who else have you had up here during the trial?

A. To be exact, a total of approximately sixty-two employees of the company subpoenaed to appear here at one time or another.

Q. All those are witnesses for the plaintiff, were they not?

A. I was called as your witness.

Q. I didn't choose to use you, did I? You were not put on the stand as my witness? You didn't testify?

A. I was put on the stand. My understanding was I was your witness.

Court: Let's pass on.

Q. What officials other than Comer have been here during this whole trial or any part of it arranging witnesses for Harris or otherwise?

A. Now, there have been people from the plant here. No one was assigned the responsibility of calling witnesses, with the exception of Jerry Comer. That was provided by consent of counsel and with the consent of the judge. Mr. Comer called the plant and contacted Harold D. Orr or myself.

Q. Was Orr here on the first day of the trial?

A. No.

Q. Down in the hall with the company witnesses?

A. He was not.

[fol. 609] Q. So you have been in on the getting of company witnesses? They either called you or Orr. Is that correct?

A. That's right.

Q. Did you talk about your testimony that you were going to give today with Mr. Harris over in Caddell's office? Yes or no?

A. Yes.

Q. You did? Were you informed by Harris what the testimony of the defendants had been with respect to the three o'clock meeting on July 17th?

A. No.

Q. Mr. Harris didn't tell you what the testimony had been with respect to the three o'clock meeting on July 17th?

A. No.

Q. Are you sure of that?

A. I am.

Q. You mean you got on this witness stand without knowing what these witnesses testified?

Mr. Wilkinson: He answered that three or four times.

Court: He answered.

Q. You didn't know that one had testified that Volk wasn't there?

Mr. Wilkinson: Just one testified that?

Mr. Adair: I asked if he knew that one of them had testified that.

A. I knew Volk wasn't here because I had not seen him when I was previously here, and I asked Jerry Comer if Mike Volk was here. I did know that one of the witnesses had testified that Volk was not there.

Q. Who told you that?

A. I believe Mr. Harris.

Q. Didn't you testify just a moment ago that Harris didn't tell you anything these defendants testified to?

A. I did not.

AUSTIN CRITES, next witness for plaintiff in rebuttal, being duly sworn, testified:

Direct examination.

By Mr. Harris:

Q. You are Austin Crites?

A. Yes, sir.

Q. You work for Wolverine Tube Division?

A. Right.

[fol. 610] Q. In what capacity, Mr. Crites?

A. Machine shop general foreman.

Q. Did you hold that job in July, 1951?

A. I did.

Q. That was at the time of the strike?

A. That's right.

Q. You say you were the general foreman of the machine shop at the time this strike began?

A. Right.

Q. How long had you been that?

A. General foreman?

Q. Yes, sir.

A. Ever since they opened in 1948.

Q. Ever since they opened in 1948?

A. Yes, sir.

Q. What was your practice and custom with reference to cleaning the machines and sweeping the floor of the machine shop?

A. It was the general custom that we had that the operator should clean the machine at the end of a shift and the area around so it would be clean for the next shift coming on.

Q. What were your regular hours, Mr. Crites?

A. From eight until five p. m.

Q. You remember the day this strike started, do you?

A. Yes, sir.

Q. I will ask you to tell the jury whether or not on the morning of that day you told Howard Goodlett that the shop was going to be closed for a few days and asked him to sweep it up?

A. No, sir, I told no one that the shop was going to be closed; that wasn't my prerogative.

Q. Did you or do you recall talking to him at all that day?

A. I presume I spoke to him as every day.

Q. Do you have any recollection of having a conversation with him on that day?

A. No direct conversation.

Q. Do you know an employee there by the name of Corum?

A. Yes, sir.

Q. I will ask you whether or not at that time, before that strike, you told Corum that the gates of the plant would be closed if there was a strike?

[fol. 611] A. No, sir, I did not.

Q. Did you tell any other employee?

A. I told no one.

Cross examination.

By Mr. Adair:

Q. How long have you been at Wolverine?

A. Since 1948. I came down here in January, 1948.

Q. Did you come down from Detroit with the plant?

A. Yes, sir.

Q. You a native of Michigan?

A. No, sir.

Q. You were up there working at the time?

A. Yes, sir.

Q. You were working for Wolverine at that time?

A. Right.

Q. You moved down here when they started the plant?

A. Yes, sir, right.

Q. You a machine shop foreman?

A. General foreman.

Q. Of the machine shop?

A. Yes, sir.

Q. How many folks do you have working under your supervision?

A. I have thirty-six.

Q. Thirty-six? Tell us just what sort of room the machine shop is. Describe the interior of the machine shop, dimensions and otherwise.

A. The machine shop is approximately 100 feet long by 40 feet wide. We have lathe machines, shapers, drill presses, polishing machines.

Q. All that machinery inside this enclosure?

A. That's right.

Q. I am not too good on estimating distance. Would you say that the machine shop is about the size of the court room?

A. It is as wide as the court room and I believe possibly close to $2\frac{1}{2}$ times as long.

Q. Bigger than this court room?

A. Right.

Q. $2\frac{1}{2}$ times as long?

A. Right.

Q. Mr. Crites, you have colored janitors regularly assigned to the machine shop?

[fol. 612] A. Not under my supervision, no.

Q. Under whose supervision is the colored janitor who does the janitorial work?

A. The maintenance foreman.

Q. What is the name of the colored janitor that does that work?

A. I can't tell you.

Q. You know the name of the one at the time of the strike?

A. No.

Q. How many did you have that did that work at the time of the strike, one or more?

A. One.

Q. What was his duty?

A. He had—I can't tell you what all his duties were, but not only the machine shop to clean up but the electrical department, maintenance department and the aisles and lean-to's.

Q. Cleaned all of that. What time of day did they do that cleaning work?

A. This janitor, to the best of my recollection, came in at eight o'clock and his hours were from eight to four.

Q. Came in at eight o'clock?

A. Yes.

Q. He hadn't come in to work on the morning of July 18th at 7:30 A.M., had he?

A. No.

Q. He wasn't there that morning at 6:30, was he?

A. No.

Q. Mr. Goodlett was there?

A. He was there. He came in at twelve o'clock and was there until eight the next morning.

Q. Have you been knowing him a good while?

A. Yes, sir, He's been there quite a while.

Q. How did you regard him as an employee?

Mr. Wilkinson: We object to that, Your Honor.

Court: Sustained.

Q. Do you know Mr. Clifford Corum, Jr.?

A. Yes, sir.

Q. He is a machinist?

A. That's right.

Q. Were you in the strike up at Detroit when the plant [fol. 613] was struck up there?

Mr. Wilkinson: We object; incompetent, illegal, immaterial.

Mr. Adair: Cross examination.

Mr. Wilkinson: Adds to the confusion. What's that got to do with this strike subsequent to this strike?

Court: What's the purpose?

Mr. Adair: This is to test the witness' credibility for one thing. If I disclose the purpose, I would tip the witness off.

Court: Ask the question.

Q. Were you in Detroit working for Calumet & Hecla when a strike was called there?

Mr. Wilkinson: We object.

Court: Overruled.

A. At the time of the strike, no, sir, I wasn't working for Calumet & Hecla.

Q. I am not trying to be technical. Was it a copper company in Detroit?

A. That's right.

Q. Is the same one now connected with this company?

A. Yes, sir.

Q. You were there when it went on strike?

A. Yes, sir.

Q. Is it not true that you told some of the machinists under you that when they went on strike there, the plant closed down?

Mr. Harris: We object; it's irrelevant what happened in Detroit.

Court: I can't see the relevancy.

Mr. Wilkinson: We move to exclude that and get it out of the record.

Jury is taken out.

Mr. Adair: We offer to show that a witness previously on the stand for the defendants, Clifford C. Corum, testified that Mr. Crites here told him a few days before the strike out here that the plant would probably close down; that he was working in Detroit when they struck and on that occasion the plant did shut down.

Court: Did he testify that he told him that?

Mr. Harris: I don't recall it that way. I checked my notes [fol. 614] as to what Corum swore and it was that Crites told him that the gates would be closed if there was a strike.

Mr. Wilkinson: They are trying to prove he made a different statement.

Mr. Adair: Of course, the record will show. He also mentioned the fact that this man based his statement at that time on the fact that was company policy and was in effect in the last strike he was in.

Reporter checks notes.

Court: Objection is sustained.

Mr. Adair: We reserve an exception.

Jury returned.

Q. Mr. Crites, did you give the machinists under your supervision any instruction about coming back to work on the 18th? When the shift went off, the one supposed to go off on the 18th, did you give them instruction about coming back in?

A. Not to my recollection I didn't.

Q. Did you make preparation to cover the machinery up and do anything of that sort while it was idle?

A. No, sir.

Q. Did it run after 7:30 or 8 o'clock that morning; did you run the machinery?

A. On July 18th?

Q. Yes, sir.

A. No, the machinery didn't run after that.

Q. Until the plant reopened on August 22nd?

A. That's right, outside of what I run myself.

Q. You are not an hourly rated employee?

A. That's right.

Q. On August 22nd, did it reopen?

A. Right.

Q. On that day you did start running with hourly rated employees again?

A. Yes, sir.

HOWARD HUGHES, next witness being recalled in rebuttal for plaintiff, testified:

Direct examination.

By Mr. Harris:

[fol. 615] Q. You have testified in this case once?

A. Right.

Q. What was your position with Wolverine on the first day of the strike?

A. Supervisor of maintenance and construction.

Q. Did you have under you a colored man by the name of Marvin Garth who was a janitor?

A. Right.

Q. I will ask you whether or not on the morning of July 18, 1951, which was the first day of the strike out there, did you tell Marvin Garth, did Marvin Garth come up to you and state to you: "There is a picket line forming out there. What shall I do?" Did you reply, "Go on out. We are going to close the plant."?

A. I didn't see Marvin Garth that morning?

Q. You had no conversation with him?

A. No.

Q. Did you also have a colored man, a janitor, by the name of James Burks?

A. I did.

Q. Did you tell James Burks on the same morning that, after he inquired about it, "that the plant was going to shut down and you go on home and stay until everything is settled"?

A. I did not. I didn't see him.

Cross examination.

By Mr. Adair:

Q. Mr. Hughes, did you talk to anybody about testifying, what you were going to testify to today?

A. No, sir.

Q. You sure of that?

A. Positive.

Q. You didn't sit in on a conference with Mr. Harris yesterday?

A. I did not.

Q. You didn't go over to John Caddell's office yesterday?

A. No, sir.

Q. You have not talked to Mr. Harris before you got on the witness stand on yesterday or today?

A. No, sir.

Q. You haven't talked to Mr. Harris since you were on the witness stand the last time?

[fol. 616] A. Two days ago.

Q. Did you talk to him before or after Marvin Garth and James Burks testified?

A. I don't know when they testified.

Q. Did he tell you about their testimony?

A. Not that I recall.

Q. You don't know what they testified?

A. I don't know what they testified.

Q. Nobody told you anything?

A. They said they had sworn something against me and I would have to come back to the stand.

Q. They didn't tell you what?

A. No.

Q. You didn't have any idea?

A. I had heard rumors I told them to go out of the plant, but I didn't see them.

Q. Did you tell Harris you were going to say this morning that you didn't see them?

A. I told you the other day I didn't see them.

Q. You didn't tell Harris that?

A. No, sir.

Q. What is your job out there?

A. Foreman of maintenance and construction.

Q. How many janitors do you have?

A. Ordinarily from seven to nine.

Q. How many did you have working from 12 to 8 in the morning?

A. We don't have any.

Q. How many did you have at the time of the strike that came on at 4:30 in the morning?

A. Three.

Q. Three. When they came on to work, what did they do?

A. They were assigned to different offices to clean up ahead of the people coming in.

Q. Who did they report to?

A. When they come in?

Q. Yes, sir.

A. The man in charge on the specific shift.

Q. You out there at 4:30 in the morning?

A. No, sir, I have an assistant out there.

[fol. 617] Q. Who is he?

A. I have two assistants out there and several group leaders there.

Q. You recall whether or not you were around there at 7:00 A.M. on July 18th?

A. I was not.

Q. What time did you get there?

A. I leave the house from 7:15 to 7:30; usually takes ten minutes to drive out.

Q. Did you see Marvin Garth and James Burks on July 14th?

A. I think the plant was down and they were not working at that time.

Q. Did you see them on July 1st?

A. I don't recall.

Q. Did you see them on May 14th?

A. May 14th?

- Q. Yes, sir.
- A. What year?
- Q. 1951?
- A. I don't remember those dates.
- Q. Did you see them on May 13, 1951?
- A. I still don't remember the dates.
- Q. Is there any date you can tell me other than July 18, 1951 when you remember you didn't see them?
- A. Lots of time because they don't work every day.
- Q. You remember any dates?
- A. No.
- Q. Only date you remember definitely you didn't see them was July 18th?
- A. Well, no, I wouldn't say that.
- Q. Tell us some other date when you didn't see them.
- A. Lot of times I don't see them when we're working.
- Q. Name one time.
- A. I can't recall the specific dates; lots of days I work I never see the janitor; they have work assigned.
- Q. And on July 18, 1951, almost two years ago, you remember you didn't see them?
- A. Right.
- Q. You recall you didn't see them on that morning?
- A. I didn't see them on that morning.
- Q. Quite sure?
- [fol. 618] A. I know I didn't.
- Q. Did you see them on the morning of July 17th?
- A. July 17th?
- Q. Yes, sir.
- A. I don't recall whether I did or not.
- Q. What time did you get to the plant on the 18th?
- A. I would say it was about 20 to 15 until.
- Q. Until what?
- A. 8 in the morning.
- Q. Did any janitor report to you after you got there?
- A. Not unless there was something they needed.
- Q. If they needed anything or wanted information, they supposed to come to you?
- A. Either me or the group leader.
- Q. Did anybody come to you that morning?
- A. No, sir.

Q. You mean nobody talked to you at all?

A. No, sir.

Q. What did you do that morning?

A. I went down in the mill around the hydra press.

Q. The janitors have to requisition supplies?

A. Yes, sir.

Q. Who approved them?

A. They go up and write the request for supplies and they are in turn given to me for signature.

Q. You have to approve them?

A. Not at the time of getting the supplies.

Q. What requisitions did you approve on the morning of July 18th?

A. I don't recall approving any.

Q. You don't recall?

A. No, sir.

Q. You say you didn't approve any?

A. I don't recall any.

Q. You don't remember?

A. I don't remember signing any requisitions.

Q. Did you talk to any janitor other than Garth and Burks? Who was the other?

A. Patton Swoope comes in early in the morning, and I had four then: James Burks, Charlie Weems, four coming in early in the morning.

[fol. 619] Q. Where did you come down here from?

A. Detroit, Michigan.

Q. Detroit, Michigan?

A. Yes, sir.

Q. You never had worked with or had you worked with colored folks in the North?

A. No, sir.

Q. You find when you got down here, they came to you and asked questions of what to do and asked permission to do things?

Mr. Wilkinson: We object; immaterial and we have enough to try without trying the colored folks.

Court: Sustained.

Q. When they wanted to get off, something of that sort, who did they come to and ask?

Mr. Wilkinson: That calls for a mental operation.

Court: Overruled.

Mr. Wilkinson: We except.

Q. If you know, when these colored boys wanted to get off from work, who did they come to to ask?

Mr. Wilkinson: Same objection, same ground.

Court: Overruled.

Mr. Wilkinson: We except.

A. They would come to me or the man in charge at the time. It was most always left up to me.

Q. At that time, did they come to you quite frequently?

A. At that time.

Q. Still do?

A. Yes, sir.

Q. That is, the ones working?

A. Yes, sir.

Q. Garth and Burks, they were not rehired?

A. They did not report for work.

Q. You recall the plant being shut down on the 18th; there was no production work in the plant on the 18th, was there?

A. After eight in the morning, there was not.

Q. Do you recall the plant reopening on the 22nd day of August?

A. Yes, sir.

Q. You know whether or not there was an advertisement run in the paper announcing the reopening?

[fol. 620] Mr. Harris: We object to going over the main case again; it's repetitious.

Mr. Adair: Cross examination.

Witness: You asked me that question before and I think I gave you the answer.

Court: If that has been gone into, we won't go into it any more.

Mr. Adair: I'm testing the witness' credibility. He testified to it once.

Court: Sustained.

Mr. Adair: We except.

Q. You state, do you, Mr. Hughes, that Mr. Harris has not conferred with you in that room, or in Peach, Caddell & Shanks' office on yesterday about your testimony?

A. I do.

Re-direct examination.

By Mr. Harris:

Q. Mr. Adair has asked you about whether or not you saw James Burks and Marvin Garth on various dates, like May 1st or May 14th. Tell the jury whether or not you had a strike on May 1st or May 14th.

A. They did not have no strike out there.

Q. You haven't had but one, and that started on July 18th?

A. July 18th; that's right.

H. E. ORR, next witness for the plaintiff, on rebuttal, being first duly sworn, testified:

Direct examination.

By Mr. Harris:

Q. You are H. E. Orr?

A. Correct.

Q. Where do you live?

A. Hartselle, Alabama.

Q. Lived there all your life?

A. Right.

Q. Where do you work?

A. I am employed at the Wolverine Tube Division, Decatur plant.

Q. Since when have you been employed there?

A. Well, in the Decatur plant, I was employed about two years before this plant opened.

[fol. 621] Q. You were employed at Detroit for a while?

A. Let's say I was employed here, but I went to Detroit for training.

Q. What is your position out there, Mr. Orr?

- A. My title is employment supervisor.
- Q. Do you know Mr. Rice that works out there?
- A. R. P. Rice, yes, sir.
- Q. Does he have a nick-name, "Rip" Rice?
- A. Yes, sir.
- Q. You remember when the strike occurred out there on July 18, 1951, don't you?
- A. Yes, sir.
- Q. Tell the jury where you were at that time.
- A. Well, on the date of the occurrence of the strike, I was in Panama City, Florida on vacation.
- Q. When had you left going down there?
- A. I left Hartselle on Saturday. That would be July 14th.
- Q. On Saturday, July 14, 1951?
- A. Yes, sir.
- Q. Who did you take with you?
- A. I took my own family with me in my car.
- Q. Who went down with you?
- A. Well, Mr. Rice and I were taking our vacations at the same time that year, and we planned a week's vacation together, the two families.
- Q. That was Rip Rice?
- A. Yes, sir.
- Q. What day did he leave Hartselle?
- A. Rip and his family drove down to Hartselle on the Saturday morning I mentioned a minute ago.
- Q. The same time that you left?
- A. The two cars drove down from that point to Panama City.
- Q. You all drove down more or less together?
- A. Right.
- Q. You be ahead part of the time and he part of the time. Did you arrive there then substantially the same time?
- A. Correct.
- Q. Did you and Rip occupy the same cottage down there?
- A. At Panama City? Yes, sir.
- Q. When did you get back?
- A. We left Hartselle, as I said, on the 14th of July, [fol. 622] Saturday, and drove to Montgomery and spent the night in Montgomery Saturday night and then drove on down from Montgomery to Panama City on Sunday.

Q. And arrived there some time Sunday?

A. In the afternoon on the 15th.

Q. Was Rip with you in Montgomery?

A. Yes, sir, both families spent the night in the same motor court.

Q. How long were you and he in Florida together occupying the same cottage?

A. We arrived there on Sunday afternoon (that would be the 15th), and we remained there until Sunday, the following Sunday morning, and then left Panama City to come home.

Q. You left there—that would be the 22nd, would it?

A. 15th to 22nd—that's right.

Q. So you and he were together in Florida from the 15th of July through the 22nd of July?

A. Yes, through the morning of the 22nd. The day of the 22nd was consumed in coming back this way.

Cross examination.

By Mr. Adair:

Q. Mr. Orr, do you happen to know the last day Rip Rice worked before this vacation?

A. That he worked?

Q. Yes, sir.

A. He would have worked on—I don't know whether I can answer definitely because the plant, I believe, was closed the week before the strike.

Q. To your best knowledge, was he there the 13th of July?

A. On the 13th of July?

Q. I believe you stated you left on the 14th.

A. That's right.

Q. On Saturday?

A. Correct.

Q. As far as you know, did he work the 13th?

A. I couldn't swear to that because I don't recall definitely that I saw him in the plant.

Q. Had you heard rumors around the plant during the time the union and the company were negotiating there might be a strike?

A. Had I heard rumors to that effect?

Q. Yes, sir.

[fol. 623] A. I would say "yes".

Q. Before you went on vacation?

A. Yes.

Re-direct examination.

By Mr. Harris:

Q. You had heard frequent rumors hadn't you?

A. That was a general rumor all over the community.

Q. Going as far back as when, Mr. Orr?

A. I would say probably, sometime during the negotiations that were going on out there.

Q. Could you say as far back as a period of weeks, say, one week, two weeks, three or four weeks, anything like that that you had been hearing that?

A. I would rather not try to pin it down.

Q. It had been some time?

A. Right.

Q. Has Mr. Rice recently undergone a surgical operation?

A. Yes, sir.

PLAINTIFF RESTS

DEFENDANTS REST

IN CIRCUIT COURT OF MORGAN COUNTY

**MOTION TO AMEND COMPLAINT BY STRIKING
THREE DEFENDANTS**

Mr. Wilkinson: We would like to ask leave to amend the complaint by striking out the three defendants, Hovis, Webster and Dyer, leaving in the International Union, and the International Union representative, Mr. Volk.

Mr. Goldthwaite: Does the plaintiff have an absolute right to strike parties?

Court: Yes, sir.

[fol. 624] IN CIRCUIT COURT OF MORGAN COUNTY

COURT'S ORAL CHARGE

Gentlemen of the jury, you have now come to the point where you will be called upon soon to exercise and discharge one of the highest functions of an American citizen, that is, to pass upon the disputed questions arising between people who can not or will not settle their own differences, and have to bring them into court. It is a high place that you have and you are select men. As I said last Monday morning a week ago to you, you are selected by the officials of this county as fit and suitable men to discharge the duties of a juror. You are selected because you stand high in your community, because you are regarded as a man of fairness and intelligence. Not only that, because you are regarded as honest men, fearless men and you are brought here and these litigating parties, through their attorneys, selected you out of a large number to try these issues and thereby you were lifted up above the ordinary man who has his prejudices and is guided thereby, and you become men who are judges of the facts in the case. You are the sole judges of the evidence in this case. Neither the lawyers nor the court has any right to tell you what your verdict shall be, nor what the facts are. Of course, the attorneys argued their theories and their conclusions about the evidence and from one point to another, but after all, the final issue in this case is for you and you alone, under your oath, your solemn oath taken under the solemnity of an oath to your Almighty God.

A lot of evidence has been introduced in this case. The court was of the opinion that this was a type of case that authorized the opening up of the entire transaction. In doing so, the court acted on a statement of the law by one law writer who said in cases of this kind that great latitude should be allowed in the reception of evidence. The jury should have before them and are entitled to consider every fact which has a bearing and tendency to prove the ultimate fact in issue and which will enable them to come to a satisfactory conclusion. In such cases, the whole history of the transaction from its commencement to its conclusion is allowable, and it is no objection that the evidence covers a great many transactions and extends over a long

period of time, provided, however, that the facts shown [fol. 625] have some bearing on and tendency to prove the ultimate fact at issue, but much discretion is left to the trial court in a case depending on circumstantial evidence.

Now, gentlemen, you have had before you a large number of witnesses. It is fortunate, I think, that we have juries as we have, because you come from different areas in the county. Each of you has lived a different life from the others. Each of you has lived long enough to form opinions and judgments and you have mixed and mingled with many people and you can judge a witness who is on the stand. You look at him for the purpose of determining whether or not he is coming clean, whether or not he is an unwilling witness or a willing witness. You look at his interest, if any, he has in the case, and from all of that, taking into consideration your common knowledge that you bring into the jury box, your everyday experience, you judge each witness.

Now, gentlemen, this case, like all cases that come into court, is important. The chief importance in this and all other cases is that you reach a true verdict, as you stated with uplift hands, a true verdict under the evidence, "So help me God." That is the important thing in this case.

You don't come here to express or endeavor to carry out any preconceived political or civic view that you may have had. This case, of course, involves a transaction between management and labor and about that you have read much and maybe thought much and may have formulated some opinion, but you come into court stripped of any previous prejudices or favoritism and you try the case that is before you solely upon the evidence. The law has to deal with the controversy that arises between all citizens if they can't settle it themselves; so with labor and with management, sometimes those controversies come into court and certain rules of law have been laid down governing such matters.

Under the law, employees have a clear right to organize and select their representatives for lawful purposes. They are organized out of the necessities of the situation. A single employee is helpless in dealing with an employer of

mass labor. The laborer is dependent ordinarily on his daily wage for the maintenance of himself and family, and if his employer refuses to pay him wages that are deemed fair without the right to organize, he would be unable to leave the employ and resist arbitrary and unfair treatment. The labor union is, therefore, essential to give the laborer an opportunity to deal on an equality with the employer of mass laborers. Employees of a labor organization, that is, workmen who are not bound by contract for a definite period, who have not by agreement freely made given up such [fol. 626] rights, may without liability abandon their employment at any time either singly or in a body as a means of compelling or attempting to compel their employer to accede to demands for better terms and conditions. These laborers or employees may rightfully organize themselves into associations for mutual protection and betterment, and having thus organized, may by a confederated action withdraw from or decline to enter the service of any particular employer. The right of laborers to organize unions and to utilize such organization by instituting a strike is in the exercise of the common law right of every citizen to pursue his calling, whether for labor or business as he in his judgment thinks fit.

A peaceful strike, individually, collectively or concertedly, to bring about a cessation of labor in order to enforce a demand for betterment of wage or living conditions, even though the indirect purpose is accomplished, is not unlawful. While the right to form combinations, and through a strike to assert means to prevent men from working, may be lawful, it remains so only as long as the means employed are lawful. Undoubtedly working men have the right to better their own conditions, to abstain and persuade others to abstain from working until they get the wages to which they feel they are entitled, but there is another right which must be recognized, with which no association of men can lawfully interfere, and that is the right of any person to work for whom he pleases, at the particular wage he pleases:

Employees may rightfully organize themselves into associations for mutual protection and betterment and having thus organized, they may by confederated action withdraw from or decline to enter the service of any particular em-

ployer, as heretofore said. In the accomplishment of their purpose of self-protection and self-betterment, employees have no right to use threats, intimidation or violence against or upon employers or upon their employees or would-be employees to induce them to leave or not enter the service of the employer.

With respect to a peaceful persuasion of others not to enter an employer's service, the court instructs you that such a right is recognized by law. The boundary between lawful and unlawful conduct in the effort to induce persons not under contract to leave or not enter another's employment is the line between peaceful persuasion and intimidation. Open threats, much less actual violence, are not an indispensable accompaniment or condition of intimidation. That which in appearance and outward form is but peaceable persuasion may, by virtue of the intent which lies behind it or the circumstances which surround it, carry a [fol. 627] menace the practical effect of which is intimidation.

Picketing is not per se unlawful, and if strictly and in good faith confined to the purpose of peaceably persuading and inducing other persons, if not under contract, to leave the employment or another to not enter the employment, is not unlawful.

Workmen may lawfully combine to assert various forms of economic pressure upon an employer, provided the object sought to be accomplished thereby has a reasonable relation to the betterment of labor conditions and they act peaceably and honestly.

One of the defendants here is an unincorporated association, and unincorporated associations are responsible civilly the same as natural persons for wrongs committed by the servants or agents of such associations in the course of their employment. In such cases, it is not necessary to the liability of the association in cases of torts that the agent's authority should be expressly conferred or that the act complained of should have been ratified. Authority is implied from the agent's relation to his principal, the nature of his employment, and the mode in which he is permitted to conduct the business.

It is charged in one count of the complaint that there was a conspiracy. There is also involved in this case the liability vel non of a master, that is, the unincorporated association, for the acts of the alleged agents, and I shall deal with those two subjects together. If you are reasonably satisfied from the evidence that there was a conspiracy counted on in the complaint and that one or more of the conspirators performed the wrongful act resulting in damage as claimed in the complaint, then the court instructs you that such act so done by one or more of the participants in pursuance of the original plan with reference to the common object is in contemplation of the law the act of all. The law is that where one or more persons enter into a combination to do an unlawful act; whatever is done by one as a proximate consequence of furthering the main purpose of the conspiracy, whether specifically included in that purpose or not, is the act of all embraced in the conspiracy and binds all to responsibility. That is to say, each conspirator is responsible for everything done by his confederates which the execution of the common design makes probable in the nature of things as a consequence, even though such a consequence was not intended as a part of the original design or common plan. However, such act must be the ordinary probable effect of the wrongful act specifically agreed on, so that the connection between them may be reasonably apparent, and not an independent product [fol. 628] of the mind of one of the confederates outside of or foreign to the common design, nor a result growing out of individual malice; motive or purpose of the perpetrator, having no relation to the business of the master. As to any essential act which the conspiracy contemplated and which it was agreed that the agent of the unincorporated association should do, it is necessary that such act agreed upon by this association be in fact done by its agent for such association, and that while so doing, the agent was acting within the line and scope of his employment by such association and in the prosecution of its business. That is to say, the act agreed to be performed by the agent of the association must have been within the line and scope of his agency and of the association's business, and essential or necessary to the accomplishment of the end of the con-

spiracy, and have been in fact done by such agent pursuant to the conspiracy. Of course, a conspiracy is not completed without its execution to damningly results. Those participating to that end only are responsible.

The principal is responsible for the acts of his agent done within the scope of his employment and in the accomplishment of objects within the line of his duty, though the agent's action to accomplish the master's business was by improper or unlawful means, or in a way not authorized by the master, unknown to the master, or even contrary to the master's direction.

The test of liability, if any, of the unincorporated association in conspiracy cases is whether there was authority for doing the act in question by its official or agent, and, if so, whether such agent acted for the master. Did the unincorporated association conspire? It could only be held liable for its act done by an agent, servant or officer in the particular business in which the unincorporated association and its agents are engaged. Should the rule be otherwise, the serious interest of unincorporated associations could be jeopardized and often destroyed by the conduct and conspirings of the agents or servants engaged in the conduct of the master's business who knew nothing and cared nothing about the policy or the real interest of the unincorporated association and of whose conduct and conspiring the agent who directs and dictated the policy and more serious business affairs of the association had no knowledge. Therefore, on reason and authority where an unincorporated association is held for conspiracy, it must be established by the evidence, to the reasonable satisfaction of the jury, that the conspiracy was entered into by its agents or servants, and that by implied or expressed authority, the agent or officer was acting within the line and scope of his employment in the accomplishment of the [fol. 629] business of the master, and that such agent or officer as such did an essential or necessary act which the conspiracy contemplated. The Court instructs you that one authorized to do an act in a lawful manner has no implied authority to do that act in an unlawful manner. If you are reasonably satisfied from the evidence that the several tortious acts complained of were committed by

an individual or individuals from a motive or purpose solely and alone to gratify some personal animosity, whim, caprice, or motive, and not in furtherance of the business of the defendant, an unincorporated association, then the court instructs you that in such case the liability in each of such instances rests with the agent who did this act and not the master, the unincorporated association. Again, if, in each of said instances, the evidence reasonably satisfies your mind that such agent stepped aside wholly from his master's business to pursue a matter entirely personal, then and in such a case, the doctrine of respondeat superior does not apply. The rule of respondeat superior, that is, let the principal answer, applies only when what is complained of was done in the course of the employment. The principal is responsible not because the agent acted in the name of the principal or under color of his employment, but because the agent was actually engaged in and about the principal's business and carrying out the principal's purpose. The principal is responsible because the thing complained of, though done through an agent, was done by the principal as a matter of law, but as stated, if the things complained of were done by one not being engaged in the business of his master nor concerned about it, but impelled by motives that are wholly personal to himself and simply to gratify his own feeling of resentment, whether provoked or unprovoked, commits a tort upon another, when such act has and can have no tendency to promote any purpose in which the principal is interested and to promote which such agent was employed, then and in that event the wrong done is the purely personal wrong of the agent for which he alone is responsible. To repeat, in some degree, but in an effort to make what I have said a little clearer, the act must be not only within the scope of the employment of the agent, but also committed in the accomplishment of the objects within the line of his duties or in and about the master's business or duties assigned to him by his employer. You will see, therefore, that in order to hold the unincorporated association liable, even though you are reasonably satisfied from the evidence the wrongs complained of were done by agents of such association, that such wrongful acts were done by the authority of the associa-

tion or must have been thereafter ratified or approved by the association, or must have been done by such agent [fol. 630] while acting within the scope of his or their authority or within the course of his employment in furtherance of the defendant, unincorporated association's business.

The court has allowed to go to you for your consideration an episode of August 20, 1951 relating to injuries to an engine. That was permitted to go to you for the purpose of shedding light, if it does, on the legality of the strike. In connection with this item of evidence, you may consider any provocation, if any, therefor. In other words, in cases of that kind the provocation, if there was such and if it was of that character, may be sufficient to prevent an award of exemplary damages. In other words, on the 20th day of August, there were certain happenings. Was there any provocation for that happening. Was that an isolated case? That involves other inquiries and there are several in this case. It goes back to the first: was there an agreement and understanding between management and labor that in the event a picket line was installed, that the plant was closed to certain types of employees? That is for you to say. You have heard evidence on both sides, and it is not for the court to intimate even to you how you shall find on that, but it is for you to look at that, and if you are reasonably satisfied from the evidence there was such agreement; if you further find that on August 20th there was an apparent breach of that agreement on the part of one of the parties and an effort to reopen contrary to any agreement that they had, whether or not there is a provocation, whether or not there was a sufficient provocation, whether or not it justified in any way the act, if there was an act committed on that day.

If picketing is employed for a purpose that is lawful and if it is peaceful, or even if there are some disassociated acts of violence that do not justify a conclusion that they will be further repeated, then same is not unlawful.

Now, gentlemen, both sides have talked to you in their arguments about answers of the defendants to interrogatories propounded to the defendant by the plaintiff. The court doesn't tell you, doesn't intimate to you anything that

is in the answers or that they contain anything that is argued by the respective counsel. You will have them before you. It will be your right, probably your duty, to read them and determine whether respective counsel are correct. Then, in order to clarify the situation, the court will tell you that when people come into court, either the plaintiff or the defendant may propound interrogatories to the other, that is, ask questions and the other parties have a specified time in which to answer those under oath, [fol. 631] and then the party who asks the questions only is authorized to introduce the answers in evidence. The party who makes answer cannot introduce them in evidence. Then perhaps you will want to know what effect those answers have in case they are offered by a party. A long number of years ago, the Supreme Court of Alabama passed on that, and it has been followed repeatedly since. The fact is 101 years ago, the Supreme Court of Alabama said:

"It is at the option of the party whether he will introduce the answers in chancery of the other party, or not. If he does introduce it he admits that it is worthy of credit. The same rule must then prevail in respect to answers to interrogatories. The party introducing them admits that the respondent is worthy of credit and cannot impeach him. But using the answers of the party does not make that conclusive evidence. It is to be treated like the testimony of any other witness and is to prevail when it is not outweighed by other testimony in whole or in part."

Now, gentlemen of the jury, there are two types of damages claimed in this case. One is what we call compensatory damages and the other punitive damages or exemplary damages, or sometimes "smart money". As to compensatory damages, I charge you that if, under the instructions of the court and under the evidence submitted to you, you are reasonably satisfied that the defendant is liable to the plaintiff, you should give plaintiff a verdict for such an amount as will fairly and honestly compensate him for the injury you find he has sustained. Speaking to that particular phase of the case covered by compensatory damages, I tell you that compensation to the plaintiff is the purpose in view, and when that is accomplished, any-

thing beyond would be unauthorized. Such amount is for you to determine from all the facts in the case. As I have said, there is also claimed in the complaint another kind of damage, sometimes called exemplary damages, sometimes punitive damages, and sometimes smart money. If, in this case; after considering all the evidence and under the instructions I have given you, you are reasonably satisfied that at the time complained of and in doing the acts charged, the defendant was actuated by malice and actuated by ill-will, committed the unlawful and wrongful acts alleged, you, in addition to the actual damages, if any, may give damages for the sake of example and by way of punishing the defendant or for the purpose of making the defendant smart, not exceeding in all the amount claimed in the complaint.

In order to authorize the fixing of such damages, you must be reasonably satisfied from the evidence that there was present willfulness or wantonness and a reckless disregard of the rights of the other person.

I also charge you that the plaintiff was bound to lessen the damages occasioned by the acts of the defendant, if any, as far as possible, by the use of ordinary care and diligence.

In order to constitute willfulness or wantonness or reck-[fol. 632] less indifference to the probable consequences, it is essential that the act done should be done with the knowledge or a present consciousness that injury would probably result, and this consciousness is not to be implied from mere knowledge of the elements of the situation at hand and this followed by an act only inadvertently done.

In order for the plaintiff to recover exemplary damages or punitive damages, actual damages must be shown, because punitive damages or exemplary damages do not constitute the basis of a cause of action, but they are merely incidental to the cause of action, and if you are reasonably satisfied from the evidence that plaintiff sustained no actual damages, then exemplary or punitive damages cannot be awarded. In general, exemplary damages are recoverable when and only when the wrongful act or the wrongful conduct complained of is accompanied

or attended by certain aggravating circumstances, such as malice, wantonness, willfulness or oppression, any one of which will warrant the giving of punitive damages; and it is not necessary that there be a concurrence of the several. The motive and intent with which a wrongful act is done are in general to be considered in determining whether exemplary damages will be awarded. So, a guilty intent or desire equivalent on the part of the defendant is essential to charge him with exemplary or punitive damages. Stated broadly, in order to authorize an award of punitive damages or exemplary damages, the wrongdoer must know when he commits the act that it is wrongful and there must be such recklessness that conscious wrong-doing is necessarily implied, and he must do the act intentionally without just cause or excuse. If wrong is done willfully, that is, if a tort is committed deliberately, recklessly or by willful negligence, with a present consciousness of invading another's rights, or of exposing him to injury, then a case is presented for exemplary damages. To enable you to exercise your discretion, all the facts and circumstances which belong to the principal transaction and tend to develop its character have been submitted to you insofar as we have been able to do in the exercise of the best judgment we have. As before indicated, there need not be positive proof of malice or oppression if the transaction or the facts shown in connection therewith fairly imply its existence, and it is for you to look at all the circumstances in order to see whether there was anything in the conduct of the defendant to aggravate the damages. If, from all the evidence and the instructions of the court, you find the plaintiff is entitled to damage arising from the defendant's intentional wrong, you may take into consideration those causes even remotely contributing to the injury, not for the purpose of giving damages for the injury thus caused, but that you [fol. 633] may have in view all the facts and circumstances of the case in considering the question of exemplary damages. These damages are allowable when there is misconduct and malice or what is equivalent thereto. A tort committed by mistake, in the assertion of a supposed right, or without any actual wrong intended and without such recklessness or negligence as evinces malice or conscious

disregard of the rights of others, will not warrant giving of damages for punishment.

Regarding the punitive damages or exemplary damages, I charge you that such cannot be proven in dollars and cents, but when the evidence shows to your reasonable satisfaction an act of malice and vexation, you alone can fix in dollars and cents the measure of damages for these malicious and vexatious acts, and you are authorized to fix such punitive damages as may seem right to you, not exceeding the amount claimed in the complaint.

I say to you that it is the purpose of the law to furnish to every person a complete remedy for obtaining exact justice, and if you are reasonably satisfied from the evidence the plaintiff is entitled to recover in this action, then he would be entitled to a complete recovery for all damage suffered, as a proximate result of whatever wrong you find was committed and embraced in the complaint. And it is not necessary that the result of the injury should have been foreseen, because a wrongdoer is responsible for the natural and proximate consequences of his misconduct and not for such damages only as might reasonably be supposed to have been in the contemplation of the parties as a probable result of the tort.

If, after a careful consideration of the evidence in this case, you are reasonably satisfied therefrom that the plaintiff is entitled to recover you would so say by your verdict, and in that event the form of your verdict would be:

"We, the jury, find for the plaintiff, and we assess his damages at so much", fixing the amount,

and one of your number sign that verdict as Foreman. I said to you there are two types of damage. You are authorized to say whether or not the plaintiff is entitled to either or both, and if you should, in your judgment, be reasonably satisfied that the only damages that he sustained was in losing time, you would so say. If you find that the facts justify the imposing of punitive damages, then you would say by your verdict. You don't have to bring in a separate verdict. You would go back to the verdict and say:

"We, the jury, find for the plaintiff, and assess his damages at so much".

On the other hand, if, after a fair and full consideration [fol. 634] of all the evidence in the case and the instructions of the court, you are not reasonably satisfied that the plaintiff is entitled to recover, you would so say by your verdict, and in that event the form of your verdict would be:

"We, the jury, find for defendants",

and as in the other case, one of your number would sign as Foreman. When you have reached a verdict, knock on the door and tell the bailiff and then you will bring it into court.

At the request of the plaintiff in this case, I will give you certain written charges. These charges are not to change, alter or modify what I have said to you orally, but they are principles of law that are the law and you will take them and consider them along with the oral charge of the court in arriving at your verdict in this case. At the request of the plaintiff, I give you these charges:

IN CIRCUIT COURT OF MORGAN COUNTY

PLAINTIFF'S GIVEN CHARGES

"9. The Court charges the jury that picketing is lawful when it is for the purpose of observation, or for the purpose of peaceful persuasion, or for the purpose of apprising others of a dispute between employer and employees, but that picketing is unlawful if carried on with intimidation, threats, coercion, force or violence. Picketing is unlawful if such a large number of pickets is utilized as to obstruct a public street and block the entrance to a plant from said street, or if the pickets use threats or abusive language towards others to such an extent as to instill fear of harm or injury in the mind of a reasonable man. The Court further charges the jury that if the defendants in this case stationed or caused pickets to be stationed on

a public street, as alleged in the complaint, for the purpose of preventing plaintiff and others from entering into their place of employment by means of intimidation, threats, coercion, force or violence, and if you are reasonably satisfied from the evidence that the number of pickets and their conduct as alleged in the complaint was such as to prevent the plaintiff by such unlawful means from entering his place of employment, and as a proximate consequence thereof the plaintiff was denied access to his place of employment for a long period of time, you should return a verdict in favor of plaintiff." Given, S. A. Lynne, Judge.

"8. If you are reasonably satisfied from the evidence that the defendants on the occasion complained of wrongfully stopped plaintiff on Railroad Avenue and prevented plaintiff from getting into his place of employment by the use of force or violence or threats thereof, and that as a [fol. 635] proximate consequence thereof the plaintiff lost wages which he would have earned had he not been denied access to his place of employment, then I charge you that you should return a verdict in favor of the plaintiff, and you should include in your verdict such amount for loss of wages as you are reasonably satisfied from the evidence plaintiff sustained as a proximate consequence of the defendants denying him access to his place of employment, and such amount as in your reasonable discretion will reasonably compensate the plaintiff for any mental pain and anguish, humiliation and embarrassment as the evidence reasonably satisfies you he suffered as a proximate consequence of the wrongful conduct of the defendants, and in addition thereto you may in your sound judgment award the plaintiff what the law calls punitive or exemplary damages; that is, such amount as in your sound judgment and discretion is reasonable as a punishment to the defendants for their wrongful conduct, and to make an example to deter the defendants and others from similar conduct in the future. The awarding of punitive damages rests in your sound discretion, and if you determine to award them, the amount to be awarded is to be fixed by you in accordance with your sound judgment and discre-

tion, and in doing so you may take into consideration the nature, character and degree of the wrongs committed by the defendants." Given, S.A. Lynne, Judge.

"2. If after considering all of the evidence in this case you are reasonably satisfied therefrom that the plaintiff is entitled to recover, you may include in your verdict what the law knows as punitive or exemplary damages; that is, such amount as in your judgment and discretion is reasonable as a punishment to the defendants for their conduct on the occasion complained of and to make an example to deter the defendants and others from similar conduct in the future." Given, S. A. Lynne, Judge.

"3. If after considering all of the evidence in this case you are reasonably satisfied therefrom that the plaintiff is entitled to a verdict, you may include in your verdict such amount as would reasonably compensate him for any mental pain and anguish the evidence reasonably satisfies you he suffered as a proximate consequence of the wrongful conduct of the defendants, and the determination of this amount is left to your sound judgment and discretion in the light of the evidence in this case." Given, S. A. Lynne, Judge.

"5. If you are reasonably satisfied from the evidence that the plaintiff is entitled to recover in this case, then the Court charges you that in fixing the amount of his recovery, you will not be influenced by the fact that other persons have suits similar to this suit pending against [fol. 636] these defendants." Given, S. A. Lynne, Judge.

"6. If you are reasonably satisfied from the evidence that the plaintiff is entitled to recover, and that you should award him punitive damages, then the Court charges you that the amount of the damages awarded should not be diminished because of the fact that a number of other persons have filed similar suits against the defendants, which suits are pending and undisposed of." Given, S. A. Lynne, Judge.

"7. If after considering all of the evidence in this case you are reasonably satisfied therefrom that the plaintiff

is entitled to recover, you may in your sound judgment and discretion award to plaintiff what the law calls punitive damages or exemplary damages; that is, damages awarded to punish the defendants for their conduct on the occasion complained of, and as an example to deter the defendants and others from similar conduct in the future. The amount of the punitive damages, if in your discretion you determine to award them, is to be fixed by you in accordance with your sound discretion and judgment, and in doing so you make take into consideration the nature, character and degree of such wrongs you are reasonably satisfied from the evidence were committed on the occasion complained of." Given, S. A. Lynne, Judge.

* * * * *

At the request of the defendants, I give you these charges. You are to treat them just as I told you about the other. They do not alter, change or modify what I said to you orally, but they do state the law and are to be considered by you in connection therewith.

IN CIRCUIT COURT OF MORGAN COUNTY
DEFENDANTS' GIVEN CHARGES

"1. If the jury is reasonably satisfied from the evidence that any party or witness placed upon the witness stand has willfully given false testimony on any material issue in the case, you would be authorized to disregard his entire testimony." Given, S. A. Lynne, Judge.

"1-A. The plaintiff claims that he lost time from his work, that is, wages, as a proximate consequence of the acts complained of. I charge you that the damages recoverable from the acts complained of, if you find that [fol. 637] the acts occurred as alleged, are only those which naturally and proximately resulted from those acts. The damages which naturally and proximately result from an act are those which would not have been sustained by the plaintiff except for the occurrence of that act." Given, S. A. Lynne, Judge.

"2. The plaintiff introduced in evidence answers of the defendant, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, to interrogatories propounded by plaintiff to said Union; and plaintiff thereby vouched for the credibility of such evidence and cannot contend that said answers are unworthy of credit. I charge you that the jury would be authorized to believe the evidence contained in said answers unless you are reasonably satisfied that the plaintiff has contradicted such evidence by other testimony in the case." Given, S. A. Lynne, Judge.

"4. The plaintiff introduced in evidence answers of the defendant, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, to interrogatories propounded by plaintiff to said Union; and plaintiff thereby vouched for the credibility of such evidence and cannot contend that said answers are unworthy of credit. Plaintiff may, however, adduce other testimony concerning the evidence contained in said answers, although such testimony may contradict such answers." Given, S. A. Lynne, Judge.

"5. I charge you that unless you are reasonably satisfied from the evidence in this case that the proximate cause of plaintiff's inability to work at the Decatur plant of Calumet and Hecla Consolidated Copper Company (Wolverine Tube Division) during the period from July 18, 1951 to August 22, 1951, was that a picket line was conducted by the defendants in a manner which by force and violence, or threats of force and violence prevented plaintiff from entering the plant, and unless you are also reasonably satisfied from the evidence that work would have been available to plaintiff in the plant during said period, except for picketing in such manner, you should not return a verdict for the plaintiff." Given, S. A. Lynne, Judge.

"6. I charge you that unless you are reasonably satisfied from the evidence that the acts complained of by plaintiff occurred, and that the plaintiff suffered a loss of wages as the natural and proximate result of said acts, you should return your verdict for the defendants." Given, S. A. Lynne, Judge.

"7. I charge you that unless you are reasonably satisfied from the evidence that the acts complained of by plaintiff occurred, and that the plaintiff suffered a loss of wages as the natural and proximate result of said acts, you [fol. 638] could not award punitive damages to plaintiff." Given, S. A. Lynne, Judge.

"8. The plaintiff in this case asks that the jury award punitive damages against the defendants. I charge you that unless you are reasonably satisfied by the evidence that the conduct complained of occurred, and that, if it occurred, such conduct was done by the defendants with knowledge of circumstances and conditions of such a nature as to charge the defendants with knowing that their conduct would likely or probably result in injury, and that, through reckless indifference to consequences they consciously and intentionally did the acts complained of, you should not award punitive damages against the defendants." Given, S. A. Lynne, Judge.

"9. The plaintiff claims that he lost time from his work, that is wages, as a proximate consequence of the acts complained of. Now, if the acts complained of were the proximate cause of any damage to plaintiff, there was a duty on the plaintiff to use due diligence to minimize his own damages or injury. In other words, he was under the duty to use diligence in attempting to secure other employment, and the defendants in this case would not be liable to plaintiff, if you find for the plaintiff, for any loss of wages which the plaintiff might have avoided by diligence on his part in an effort to secure employment." Given, S. A. Lynne, Judge.

"10. I charge you that unless you are reasonably satisfied from the evidence that work would have been available to plaintiff in the Decatur plant of Calumet and Hecla Consolidated Copper Company (Wolverine Tube Division) during the period from July 18, 1951 to August 22, 1951, except for the acts complained of by plaintiff, such acts, if they occurred, would not be the natural and proximate cause of any loss of wages to the plaintiff." Given, S. A. Lynne, Judge.

"11. I charge you that if you are reasonably satisfied from the evidence that the Decatur plant of Calumet and Hecla Consolidated Copper Company (Wolverine Tube Division) was closed by its management to work by hourly-paid employees during the period from July 18, 1951, to August 22, 1951 for any cause other than the manner in which picketing was conducted by defendants, the acts complained of by plaintiff, if said acts occurred, would not be the natural and proximate cause of any loss of wages to the plaintiff.

[fol. 642] IN CIRCUIT COURT OF MORGAN COUNTY

EXCERPT FROM DEFENDANTS' REFUSED CHARGES

"40. I charge you that employees have the right to join trade, or labor, unions, and to organize themselves, in order to better their terms and conditions of employment, the right to select for themselves a representative, such as a labor union, to deal for them with their employer, the [fol. 643] right to strike for legitimate and lawful objects, and the right to picket peaceably in furtherance of their strike and to persuade peaceably others to join them in their endeavor. Where a strike of employees is directed against their employer in an effort to obtain legitimate and lawful objects, they are not liable to their employer for economic loss sustained as a result of the strike or as a result of peaceful picketing in furtherance of said strike. Neither are the employees liable to their fellow employees for wages lost because of a strike, unless it is shown that the strike is unlawful, unless it is shown that the strike was unlawfully directed against the fellow employees, or unless it is shown that the loss of wages was proximately caused by unlawful conduct in furtherance of the strike. It is not contended by the plaintiff in this case that the strike was unlawful or that the strike was unlawfully directed against the plaintiff." Refused, S. A. Lynne, Judge.

IN CIRCUIT COURT OF MORGAN COUNTY

PLAINTIFF'S EXPLANATORY CHARGE

Mr. Harris: We would like to request one explanatory charge.

Court: Gentlemen of the jury, at the request of the plaintiff, I give you this explanatory charge which is to be considered and treated by you just as the other instructions I have given you.

"Malice may be implied from the intentional doing of a wrongful act, and if you are reasonably satisfied from the evidence that the defendants intentionally committed the wrongful acts charged in the complaint then I charge you that said acts were maliciously done."

[fol. 644] IN CIRCUIT COURT OF MORGAN COUNTY

ADDITIONAL INSTRUCTION TO JURY

After some deliberation, the jury report back to the court room for further instructions:

Foreman: Does the verdict have to be unanimous?

Court: Yes, sir, by all twelve.

Foreman: And if we can't reach a verdict, what would be the form of our report to you?

Court: Gentlemen, of course, if you don't agree with each other, why the thing to do is talk with each other, endeavor to iron out any disagreements that you may have and get each other's view point and reasons for it and think about it, consider it, and endeavor to reach a unanimous verdict. Of course, no man has to give up his own conscientious and considered views. Every man has a right to his views under the evidence and instructions of the court. If you can reach an agreement, why, of course, that is what we all want and hope for. Nevertheless, if you finally can't agree, why knock on the door and tell the bailiff and I will have you come in; and if there is anything further you want to know with all the parties here, I will be glad to tell you what I can.

•Foreman: Do we have to give the way the jury votes?

Court: That is a matter entirely for you. You don't have to tell me anything about that.

[fol. 653] IN THE SUPREME COURT OF ALABAMA

No. —

JUDICIAL CIRCUIT

Appealed from the Circuit Court of Morgan County,
Alabama, No. 6149

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO), and MICHAEL VOLK, Appellants, Defendants Below,

v.

PAUL S. RUSSELL, Appellee, Plaintiff Below.

EXCERPTS FROM ASSIGNMENTS OF ERROR

Come now the Appellants, INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO), and MICHAEL VOLK, separately and severally, and assign as error, separately and severally, the rulings, orders, judgments and decrees, separately and severally, of the Supreme Court of Alabama and of the Circuit Court, as follows:

1.

The Supreme Court of Alabama erred in its opinion, judgment and decision of March 13, 1953, in the case of Paul S. Russell v. International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO); et al., 8th Division 697, the previous appeal by the plaintiff in the within cause, deciding that the trial court erred in overruling the plaintiff's demurrer to the defendant's plea to the jurisdiction of the State Court, and reversing the judgment of the lower court and remanding the cause. (Opinion of the Court, page 16, 8th Div. 697).

2.

The Supreme Court of Alabama erred in its decision of April 2, 1953, in the case of Paul S. Russell v. International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO), et al., 8th Div. 697, the previous appeal of the plaintiff in the within cause, overruling and denying the defendant's application for a rehearing (Record, 8th Div. 697), and erred in failing [fol. 654] to grant said rehearing, in failing to vacate its opinion and judgment of March 13, 1953, and in failing to affirm the judgment and decision of the trial court.

4.

The Circuit Court erred in its judgment and decision (R., pp. 53, 54) sustaining plaintiff's demurrer (R., pp. 45, 46, 47), refiled (R., pp. 53, 54) to defendants' plea to the jurisdiction (R., pp. 9, 10, 11), based upon the lack of jurisdiction in the state court, refiled (R., pp. 53, 54), to plaintiff's complaint and each count thereof, separately and severally, as amended (R., pp. 43, 44, 45), and refiled (R., pp. 53, 54) to plaintiff's complaint and each count thereof separately and severally, as finally amended (R., pp. 51, 53, 54).

[fol. 662]

41.

The Circuit Court erred in giving to the jury at the request of the plaintiff, in writing, the following charge:

"9. The court charges the jury that picketing is lawful when it is for the purpose of observation, or for the purpose of peaceful persuasion, or for the purpose of apprising others of a dispute between employer and employees, but that picketing is unlawful if carried on with intimidation, threats, coercion, force or violence. Picketing is unlawful if such a large number of pickets is utilized as to obstruct a public street and block the entrance to a plant from said street, or if the pickets use threats or abusive language towards others to such

an extent as to instill fear of harm or injury in the mind of a reasonable man.. The Court further charges the jury that if the defendants in this case stationed or caused pickets to be stationed on a public street, as alleged in the complaint; for the purpose of preventing plaintiff and others from entering into their place of employment by means of intimidation, threats, coercion, force or violence, and if you are reasonably satisfied from the evidence that the number of pickets and their conduct as alleged in the complaint was such as to prevent the plaintiff by such unlawful means from entering his place of employment, and as a proximate consequence thereof the plaintiff was denied access to his place of employment for a long period of time, you should return a verdict in favor of plaintiff.' Given,
S. A. Lynne, Judge." (R. p. 634).

[fol. 663]

46.

The Circuit Court erred in refusing to give to the jury at the request of the defendants, in writing, the following charge:

"‘40. I charge you that employees have the right to join trade, or labor, unions, and to organize themselves, in order to better their terms and conditions of employment, the right to select for themselves a representative, such as a labor union, to deal for them with their employer, the right to strike for legitimate and lawful objects, and the right to picket peaceably in furtherance of their strike and to persuade peaceably others to join them in their endeavor. Where a strike of employees is directed against their employer in an effort to obtain legitimate and lawful objects, they are not liable to their employer for economic loss sustained as a result of the strike or as a result of peaceful picketing in furtherance of said strike. Neither are the employees liable to their fellow employees for wages lost because of a strike, unless it is shown that the strike is unlawful, unless it is shown that the

strike was unlawfully directed against the fellow employees, or unless it is shown that the loss of wages was proximately caused by unlawful conduct in furtherance of the strike. It is not contended by the plaintiff in this case that the strike was unlawful or that the strike was unlawfully directed against the plaintiff." Refused, S. A. Lynne, Judge." (R. pp. 642, 643).

[fol. 677]

75.

The Circuit Court erred in its judgment (R. p. 79) overruling Ground 11 of defendants' motion for a new trial (R. p. 55), which is as follows:

"For that the verdict of the jury is so excessive as to indicate bias, prejudice and malice on the part of the jury toward the defendants."

77.

The Circuit Court erred in its judgment (R. p. 79) overruling Ground 2 of defendants' motion for a new trial (R. p. 55) which is as follows:

"For that the verdict of the jury is not sustained by any evidence in the case, and is without evidence to support it."

78.

The Circuit Court erred in its judgment (R. p. 79) overruling Ground 4 of defendants' motion for a new trial (R. p. 55), which is as follows:

"For that the verdict of the jury is contrary to the great weight of the evidence."

79.

The Circuit Court erred in its judgment (R. p. 79) overruling Ground 8 of defendants' motion for a new trial (R. p. 55), which is as follows:

"For that the verdict is contrary to law."

[fol. 693] IN THE SUPREME COURT OF ALABAMA
8 Div. 751

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO,
an Unincorporated Organization; et al.

v.

PAUL S. RUSSELL

Appeal from Morgan Circuit Court

OPINION—March 22, 1956

LIVINGSTON, *Chief Justice.*

This is the second appeal in this cause. Paul S. Russell brought suit against International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, an unincorporated organization, and other unions, later stricken by amendment, and Michael Volk, and other individuals, who were also stricken by amendment. Michael Volk is a resident of the State of Alabama and a member of the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, an unincorporated organization. The defendants filed a plea to the jurisdiction, to which the plaintiff demurred. The court overruled the demurrer to the plea and because of this adverse ruling, the plaintiff took a nonsuit and appeal on the record, as authorized by Sec. 819, Title 7, Code 1940. On that appeal this court held that the Circuit Court of Morgan County, Alabama, did have jurisdiction of the cause of action stated in the complaint and reversed and remanded the cause to the Circuit Court of Morgan County. *Russell v. International Union, Automobile, Aircraft & Agricultural Implement Workers of America, CIO et al.*, 258 Ala. 615, 64 So. 2d 384.

[fol. 694] After the cause was remanded to the circuit court, that court set aside its judgment of nonsuit and reinstated the cause on the trial docket. Thereafter, some amendments were made to the complaint, and the complaint as last amended contained two counts which were

substantially the same as the counts before this court on former appeal. The plea to the jurisdiction of the court was refiled and demurrers thereto were sustained by the trial court. Demurrers to each count of the complaint being overruled, defendants entered a plea of the general issue in short by consent with leave, etc. The case was then tried to a jury and resulted in a verdict for the plaintiff for \$10,000, and the defendants bring this appeal.

The question of jurisdiction is again raised and argued. Since our decision on former appeal, the Supreme Court of Virginia rendered its decision in the case of *United Construction Workers v. Laburnum Construction Corp.*, 194 Va. 872, 75 S.E. 694. The Virginia Court there said:

"It is settled by recent decisions of the Supreme Court of the United States that by the passage of the National Labor Relations Act of 1935, 49 Stat. 449, 29 U.S.C.A. § 151 et seq., as amended by the Labor Management Relations Act of 1947, 61 Stat. 136, 29 U.S.C.A. § 141 et seq., Congress has occupied and closed to the States the field of regulation of peaceful strikes for higher wages in industries engaged in interstate commerce. *International Union, etc. v. O'Brien*, 339 U.S. 454, 457, 70 S. Ct. 781, 783; 94 L. Ed. 978; *Amalgamated Ass'n, etc. v. Wisconsin Employment Rel. Bd.*, 340 U.S. 383, 390, 71 S. Ct. 359, 363, 95 L. Ed. 364.

"But this is not to say that by the passage of the Act the courts of the several States have been deprived of their traditional power and jurisdiction to deal with unlawful conduct committed within their respective territorial limits during the course of a labor dispute which may affect interstate commerce. The Supreme Court has repeatedly held that an intention of Congress to exclude states from exerting their police power must be clearly manifested." *Allen-Bradley Local, etc. v. Wisconsin Employment Rel. Bd.*, 315 U.S. 740, 749, 62 S. Ct. 820, 825, 86 L. Ed. 1154; and cases there cited. As was said in *Kelly v. State of Washington*, 302 U.S. 1, 10, 58 S. Ct. 87, 92, 82 L. Ed. 3, * * * "the exercise by the state of its police power, which would be valid if not super-

sed by federal action, is superseded only where the repugnance or conflict is so "direct and positive" that the two acts cannot be "reconciled or consistently stand together."

"In *Erwin Mills, Inc. v. Textile Workers Union of America*, 234 N.C. 321, 67 S.E. 2d 372; it was held that the federal Act did not deprive the State court of the power by appropriate action to protect persons and property from threatened ~~unlawful~~ acts of violence committed during the course of a strike or labor [fol. 695] dispute and injurious to the rights of the State's citizens. To the same effect are, *Williams v. Cedartown Textiles*, 208 Ga. 659, 68 S.E. 2d 705; *International Moulders, etc. v. Texas Foundries*, Tex. Civ. App., 241 S.W. 2d 213; *State ex rel. Allai v. Thatch*, 361 Mo. 190, 234 S.W. 2d 1; *Rice and Holman v. United Elec. Radio & Mach. Workers*, 3 N.J. Super. 258, 65 A. 2d 638.

"The determination of the present question is governed by the same principles. While the Act provides a remedy to restrain the commission of acts constituting unfair labor practices, there are no words which indicate that such remedy is exclusive, or that the Act was designed to deprive *an employer or his employees* of the common-law right of action in a State court for acts of violence or intimidation which may constitute unfair labor practices. Nor does the exercise by the State of its jurisdiction in enforcing such cause of action conflict with any of the provisions of the Act, or in any way impinge upon the rights thereby protected. (Emphasis supplied.)

"Upon substantially this reasoning the Supreme Court of Alabama in *Russell v. International Union*, Ala. Sup. 64 So. 2d 384, decided March 13, 1953, upheld the right of the State court to entertain an action for damages against a labor union for malicious acts of violence and threats of personal injury by the union's agents which prevented plaintiff from engaging in his employment, although such conduct on the part of

the union's agents constituted an unfair labor practice under the federal Act.

"The motion to dismiss was properly overruled."

The Supreme Court of the United States in reviewing the *Laburnum* case, *supra*, said:

"The question before us is whether the Labor Management Relations Act, 1947, has given the National Labor Relations Board such exclusive jurisdiction over the subject matter of a common-law tort action for damages as to preclude an appropriate state court from hearing and determining its issues where such conduct constitutes an unfair labor practice under that Act. For the reasons hereafter stated, we hold that it has not." 347 U.S. 656.

These recent cases but fortify our decision on former appeal. The argument that there is a distinction between the *Laburnum* case and the instant case, in that the employer was the plaintiff in the one, and an employee is the plaintiff in the other, is clearly without merit.

The legal sufficiency of each of the two counts of the complaint which were submitted to the jury is assailed on this appeal. As stated above, the complaint was amended after the cause was remanded to the trial court by this court. We have indicated that the amendments worked no material change in either of the two counts, but for perfect clarity Count One of the complaint, as it reads giving effect to all amendments to it, will be set out in the report of the case. Count 2 is similar to Count [fol. 696] One, except that it alleges a conspiracy among the defendants in connection with the same matters alleged in Count One.

In briefs, both appellants and appellee devote much time and space to the question as to whether the complaint states a cause of action for false imprisonment; also, as to whether it states a cause of action as for a nuisance in blocking a public street. But we lay these arguments aside. We think the complaint states a cause of action for unlawfully and maliciously preventing plaintiff from engaging in his employment. We also think that the evi-

dence was sufficient to take the case to the jury on both counts of the complaint.

Two principal theories are advanced as to why the complaint does not state a cause of action for unlawfully and maliciously preventing plaintiff from engaging in his employment. First, that the complaint does not sufficiently allege that plaintiff lost wages as a result of the unlawful picketing. In other words, that it is not alleged that work would have been available to plaintiff at the plant had he been able to enter it during the period of time complained of. Second, that the names of the agents through whom the union acted are not shown, and that Count 2 is vague and indefinite.

We need not cite authority to the effect that peaceful picketing for a lawful purpose and in a lawful manner is lawful. We judicially know that, ordinarily, union employees will not cross a picket line. It is equally true that union or nonunion employees may lawfully cross a picket line if they desire to do so. But here, these matters are unimportant. The gravamen of the complaint is that defendants unlawfully and maliciously prevented plaintiff from engaging in his employment by unlawful means.

This court recognizes that the right to pursue a lawful occupation is a property right, and the wrongful interference therewith is an actionable wrong. *Sparks v. McCrary*, 156 Ala. 382, 47 So. 332; *Hardie-Tynes Mfg. Co. v. Cruse*, 189 Ala. 66, 66 So. 657; *U. S. Fidelity and Guaranty Co. v. Millonas*, 206 Ala. 147, 89 So. 732; *Bowen v. Morris*, 219 Ala. 689, 123 So. 222; *Hill Grocery Co. v. Carroll*, 223 Ala. 376, 136 So. 789; *Carter v. Knapp Motor Co.*, 243 Ala. 600, 11 So. 2d 383; *Russell v. International Union*, etc., supra; *Lash v. State*, 244 Ala. 48, 14 So. 2d 229; *Alabama State Federation of Labor v. McAdory*, 246 Ala. 1, 18 So. 2d 810.

[fol. 697] *Sparks v. McCrary*, supra, was an action in which plaintiff alleged that defendant wrongfully prevented plaintiff from carrying on his retail business. In reversing a judgment sustaining a demurrer to the complaint, this court said;

"In necessary consequence, an unlawful invasion of or interference with the pursuit or progress of one's

trade, profession, or business is a wrong for which an action lies. Holt, C. J., in *Keeble v. Hickeringill*, 11 East, 574, thus states the doctrine: 'He that hinders another in his trade or livelihood is liable to an action for so hindering him'—though it must be that he intended the broad declaration to be subject to the qualification that the hinderance, the act or conduct so resulting, be wrongful, unlawful, and this, independent, as a general rule, of the motive or intent with which the hinderance was accomplished."

Employees may strike and may picket their employer's place of business when it is done in a lawful manner and to accomplish a lawful purpose. *Hotel and Restaurant Employees v. Greenwood*, 249 Ala. 265, 30 So. 2d 696; *Alabama State Federation of Labor v. McAdory*, supra; *Thornhill v. Alabama*, 310 U.S. 88, 60 S. Ct. 736, 84 L. Ed. 1093. Picketing must be conducted in a lawful manner and it becomes unlawful when force and violence or the threat of force and violence are used to intimidate employees who are not engaging in the strike. *Hardie-Tynes Mfg. Co. v. Cruse*, supra; *Milk Wagon Drivers Union v. Meadowmoor Dairies*, 312 U.S. 287, 61 S. Ct. 552, 85 L. Ed. 836. The use of force and violence or the threat of force and violence against one's person is manifestly unlawful. Furthermore, the Alabama statutes make it unlawful for one to use force, threats or intimidation to prevent another from engaging in a lawful occupation. Tit. 14, Sec. 57, Code 1940; Tit. 26, Secs. 384, 385, Cumulative Pocket Part, Code 1940.

The rules of pleading in Alabama require that all matters essential to plaintiff's right to relief be stated with sufficient certainty, clearness and precision to enable defendant to prepare to defend against the action and so as to allow the court and jury to understand the allegations. *Cauble v. Boy Scouts of America*, 250 Ala. 152, 33 So. 2d 461; *Dudley v. Martin*, 241 Ala. 435, 3 So. 2d 7; *Alabama Great Southern R. v. Cardwell*, 171 Ala. 274, 55 So. 185; *Weller and Co. v. Camp*, 169 Ala. 275, 52 So. 929.

The complaint alleges that at the time complained of "Plaintiff was an employee of Calumet & Hecla Consoli-

dated Copper Co. (Wolverine Tube Division) engaged in his said employment at the plant of his said employer in Decatur, Alabama," and the defendants "in order to [fol. 698] make the strike effective, and in order to prevent plaintiff and various other employees of plaintiff's employer, who desired to continue working for their said employer, notwithstanding said strike, from entering their employer's place of business, established and maintained from, to-wit, July 18, 1951 to September 24, 1951, a picket line along and in said public street at a point thereon in close proximity to said plant, consisting of great numbers of persons, some of whom were walking at various and sundry intervals during said period in a close and compact circle across the entire traveled portion of said street, and said pickets, on or about July 18, 1951, by force of numbers, threats of bodily harm to plaintiff and damage to his property, and by force and violence consisting in taking hold of the automobile in which plaintiff was riding and thereby stopping it, and consisting of some of said pickets standing or walking in front of said automobile, blocked said public street and made passage to said plant over the same impossible for plaintiff and for others similarly situated, and defendants thereby willfully and maliciously prevented plaintiff from going to and from said plant and from engaging in his said employment, and caused plaintiff to lose much time from his work, to-wit, from July 18, 1951 to August 22, 1951, and to lose earnings from his employment at said plant which he would have received had he not been prevented as aforesaid from going to and from said plant. . . ."

We think it would be indulging in hypercriticism to say that the complaint was demurrable because it did not spell out in so many words that work was available to the plaintiff at his employer's plant. The complaint alleges that plaintiff had a job; that he was on his way to it; that defendants unlawfully and maliciously prevented him from getting there, and as a consequence he lost wages on account thereof. These allegations of fact are sufficient to show that work was available to plaintiff had he been able to go to his employer's plant. Indeed, defendants under the plea to the general issue in short by consent attempted

to prove that no work was available to plaintiff because of the strike at the plant. The evidence on this point was in conflict and resolved against defendants by the jury.

It is not necessary that plaintiff allege the name of the agent or agents through whom the defendant union was acting [fol. 699] *Abigdon Mills v. Grogan*, 167 Ala. 146, 52 So. 596. The criticism that Count 2 is vague and indefinite is also without merit. The demurrer to each count was properly overruled.

Appellants assign as error the action of the trial court in overruling appellants' motion for new trial, which motion recited as grounds that: (1) The verdict is contrary to the evidence, (2) the verdict is not sustained by the evidence, (3) the verdict is contrary to the great weight of the evidence, and (4) the verdict is contrary to law.

Appellants' argument is based on the theory that plaintiff is not entitled to any recovery against the defendants if plaintiff's loss of working time and wages was due to a closing of the plant by his employer and not due to any action on the part of the defendants which may have prevented plaintiff from crossing the picket line. Appellants argue that the evidence clearly shows that plaintiff's employer closed the plant to all hourly-rated employees pursuant to an agreement between the employer and the union; and that even though plaintiff had been able to cross the picket line, no work would have been available to him. The record in this case is very lengthy, making it impractical to set out the evidence in this opinion. It is sufficient to say that there was evidence introduced on behalf of the plaintiff which contradicts the defendants' evidence, and which if believed, would justify a verdict for plaintiff. Under these circumstances, we will not overrule the trial court's ruling on the motion for new trial. *Cobb v. Malone*, 92 Ala. 630, 9 So. 738; *Smith v. Smith*, 254 Ala. 404, 48 So. 2d 546; *Bell v. Nichols*, 245 Ala. 274, 16 So. 2d 799.

A directed verdict for the defendants can only be justified upon the theory that the plaintiff, upon whom rests the burden of proof to establish the right to recover, has wholly failed to adduce evidence to support his cause of action, or that the testimony of plaintiff's own witnesses, without conflict, makes out the defense of the opposing

party. If plaintiff makes out a prima facie case, and the defense is dependent upon oral testimony, the court must leave the credibility of the evidence to the jury and not direct a verdict for the defendant. *Schoenith, Inc. v. Forrester*, 260 Ala. 271, 69 So. 2d 454; *Byars v. Alabama Power Co.*, 233 Ala. 532, 172 So. 621, and cases cited therein. In [fol. 700] this jurisdiction, there need be only a scintilla of evidence to require reference of the issue raised thereby to the jury. *Barber v. Stephenson*, 260 Ala. 151, 69 So. 2d 251. Appellants contend that plaintiff introduced no evidence to show that plaintiff was damaged by any illegal conduct on the part of the defendants.

The record reveals that plaintiff introduced evidence tending to prove the following: Plaintiff was a regular employee of the Calumet and Hecla Consolidated Copper Company (Wolverine Tube Division). He worked regularly at an hourly rate of pay and averaged approximately 50 hours a week for the six months preceding July 18, 1951. On occasions when no work was available, the employees were notified in advance by the company. Plaintiff had not been notified that there would be no work on July 18, 1951, and he and numerous other employees went to the plant on that morning expecting to work. When these employees arrived at the approaches to the plant, they found that a strike was in progress, directed by officials of defendant union, including defendant, Michael Volk. The union placed a picket line across the street leading into the plant. Plaintiff attempted to drive through the picket line, but large numbers of men closed in around his car, making it impossible to go forward. One of the strikers held onto the car door handle, and there were shouted threats to turn plaintiff's car over, along with other threatening shouts from the strikers. After some time, plaintiff left the scene and returned to his home. No hourly-rated employees were able to cross the picket line until August 22, 1951, when, with the aid of a large number of law enforcement officers, approximately 200 employees entered the plant and resumed work.

Frank W. Oakes, who was Industrial and Public Relations Director for the plant and who represented the management at a pre-strike meeting with the union, denied telling union officials that the plant would be closed to

hourly-rated employees during the strike. Considering the evidence introduced by plaintiff, it was not error to refuse to direct a verdict for defendants.

Appellants assign as error the admission of testimony concerning events transpiring on August 22, 1951 over objection that such testimony was irrelevant, incompetent, immaterial and illegal for the reason that the pleading confined the issue to events occurring within a period which ended on August 21, 1951. The court admitted the [fol. 701] evidence for the purpose of proving the allegations of Count 2 of the complaint which alleges a conspiracy to prevent plaintiff's engaging in his employment. The evidence was admissible for this purpose. In the recent case of *Barber v. Stephenson*, 260 Ala. 151, 69 So. 2d 251, Mr. Justice Simpson, speaking for the court, said:

"It is contended for all the defendants that there was no proof that they had entered into any sort of conspiracy prior to October 3, 1947, the onset date of the alleged combination. Concededly there was no positive evidence to that effect, but a conspiracy need not alone be established by that character of evidence. Indeed, seldom is such the case. It is only by looking to the conduct of the alleged conspirators during the progress of the conspiracy and the end result achieved that usually such a fact is established. And to that end it is proper to consider evidence extending over a considerable period, both before and after the date of the alleged combination and even after its termination, just so the proof has a tendency to establish the ultimate fact. *Scheele v. Union Loan & Finance Co.*, 200 Minn. 554, 274 N.W. 673; *Blakeney v. State*, 31 Ala. App. 154, 13 So. 2d 424, certiorari denied, 244 Ala. 262, 13 So. 2d 430; 15 C.J.S. Conspiracy, § 92, p. 1143."

Under the above-stated principles, evidence of actions of the pickets on August 22, 1951 was clearly admissible to prove a conspiracy. On this theory it was also correct to admit evidence of an incident occurring on August 20, 1951, in which strikers used force to prevent a locomotive from

pulling cars loaded with raw materials into the plant. All of the incidents have probative value toward the determination of whether or not a conspiracy existed on the part of the defendants.

The question is raised as to the admissibility of a motion picture film which the trial court allowed to be introduced into evidence over defendants' objection. The film purported to show action taking place on the picket line on the morning of August 22, 1951, which was the day plaintiff and others returned to work. The picture was taken by the witness McGregor who testified to facts tending to identify the film and verify it as a true representation of the action he saw on that occasion. He also testified as to the technical and mechanical features of producing the film and showing it to the jury in such a way as to accurately portray the events filmed. The introduction of the film was objected to on the grounds that it was a copy and not the original film, that it had been cut and edited, and that it was not a continuous picture, but had been taken at selected intervals during the morning.

[fol. 702] The best evidence rule does not apply to this situation so as to make the copy inadmissible. The motion picture does not of itself prove an actual occurrence but the thing reproduced must be established by the testimony of witnesses. *Decamp v. United States*, 10 Fed. 2d 984. The motion picture as exhibited to the jury is the pictorial communication of the witness' testimony and is used to convey the observations of the witness to the jury more fully and accurately than the witness can convey them verbally. *Brown v. State*, 186 Tenn. 378, 210 S.W. 2d 670. The picture is not admissible unless a witness testifies that the picture as exhibited accurately reproduces the objects or actions which he observed. *Pacific Mutual Life Ins. Co. of California v. Marks*, 230 Ala. 417, 161 So. 543; *City of Anniston v. Simmons*, 31 Ala. App. 536, 20 So. 2d 52, Cert. den. 246 Ala. 153, 20 So. 2d 54; *Louisville & Nashville RR. v. Sullivan*, 244 Ala. 485, 13 So. 2d 877; *Kansas City, Memphis & Birmingham RR. Co. v. Smith*, 90 Ala. 25, 8 So. 43; *Alabama Trunk & Luggage Co. v. Hauer*, 214 Ala. 473, 108 So. 339.

Where a witness testifies that the picture is an accurate reproduction of the matter it purports to portray, the fact that it is not the original film or that it has been cut to the extent of adding titles showing the time certain pictured events occurred does not necessarily make the film inadmissible. These matters affect the credibility and the weight to be given the picture by the jury.

There is no doubt that motion pictures are subject to change and falsification, as is the testimony of any witness, but protection against falsification or misrepresentation lies in the requirement of preliminary proof that the picture is an accurate reproduction of the event which it depicts and in the opportunity for cross examination of the witness making such proof. *People v. Dabb*, 32 Cal. 2d 491, 197 P. 2d 1; *Heiman v. Market Street Ry. Co.*, 21 Cal. App. 2d 311, 69 P. 2d 178.

The objection that a motion picture film which does not show a continuity of action is misleading and therefore inadmissible is treated in *McGoorty v. Benhart*, 305 Ill. App. 458, 27 N.E. 2d 289, in which the court held that where, as here, the photographer testified how the pictures were taken at intervals and at different times, the jury would not be misled.

The determination of the sufficiency of the preliminary [fol. 703] proofs offered to identify the photograph or to show that it is an accurate representation of the objects which it purports to portray is a matter within the sound discretion of the trial court and will not be reviewable except for gross abuse. *McKee v. State*, 253 Ala. 235, 44 So. 2d 781.

It is likewise a matter for the trial court in the exercise of his sound discretion to determine whether the motion picture will aid the jury or tend to confuse or prejudice the jury. *Morris v. E. I. duPont de Nemours & Co.*, 346 Mo. 126, 139 S.W. 2d 984; *State v. United Railways & Electric Co. of Baltimore*, 162 Md. 404, 159 A. 916; *Rogers v. City of Detroit, Department of Street Railways*, 286 N.W. 167, 289 Mich. 86; *Denison v. Omaha & CB St. Ry. Co.*, 280 N.W. 905, 135 Neb. 307; *Boyarsky v. G. A. Zimmerman Corp.*, N.Y.S. 134, 240 App. Div. 361.

In this case, testimony showed that McGregor operated

the motion picture camera taking the picture. He had been trained in photography and the exhibition of motion pictures. He sent the film to the Eastman Laboratory in Chicago to be developed as is the usual practice among those making industrial motion pictures. When it was returned to him, he cut off the unexposed portions on each end of the film and spliced in titles giving the time each pictured event occurred. The film was sent again to the Eastman Laboratory where the copy which was introduced was made. McGregor testified that the film introduced and shown in court is identical to the original, and depicts the objects and action exactly as he took it. McGregor also testified to other details of making and exhibiting the picture which were necessary to a proper foundation for admission of the film but which are unimportant to the question now before us. Captain C. M. Thorsen, of the Alabama Highway Patrol, who was on duty at the scene of the strike on August 22, 1951, also testified that the film as shown to the jury accurately portrayed the action he had observed there on that morning.

It does not appear that the trial judge abused his discretion by allowing this film to be introduced.

Charge No. 2, given at the request of plaintiff, is as follows:

"2. If after considering all of the evidence in this case you are reasonably satisfied therefrom that the plaintiff [fol. 704] is entitled to recover; you may include in your verdict what the law knows as punitive or exemplary damages; that is, such amount as in your judgment and discretion is reasonable as a punishment to the defendants for their conduct on the occasion complained of and to make an example to deter the defendants and others from similar conduct in the future."

This charge is not subject to defendants' ground of objection that it does not instruct that punitive damages may be awarded only if the acts of defendants were found to have been done willfully, wantonly, or maliciously. The charge predicates the awarding of punitive damages on a determination that plaintiff is entitled to a recovery. In order to determine that plaintiff is entitled to a recovery the jury

must find that defendants' acts were willfully and maliciously done, since malice is an essential element of the cause of action alleged in plaintiff's complaint. Wherever malice is an ingredient of the cause of action, the plaintiff's recovery may include punitive damages in the sound discretion of the jury. *Penney v. Warren*, 217 Ala. 120, 115 So. 16.

* Appellants further argue that the charge was erroneously given because it fails to instruct that punitive damages could be awarded only if the jury determined that plaintiff suffered actual damages. This argument is without merit for the subject is fully covered in the oral charge given by the judge. Such being the case, if any error existed, it is not reversible error. *Marbury Lumber Co. v. Lamont*, 198 Ala. 566, 73 So. 923; *Western Union Telegraph Co. v. Gorman*, 237 Ala. 146, 185 So. 743; *McGough Bakeries Corp. v. Reynolds*, 250 Ala. 592, 35 So. 2d 332. The oral charge also cured any possible defect in plaintiff's requested Charge No. 3, given by the Court.

Appellants assign as error the giving of an unnumbered explanatory charge at the request of the plaintiff. However, as the charge appears in the transcript of the record, it does not contain the endorsement by the judge as required by Sec. 273, Tit. 7, Code 1940, and, therefore, presents nothing for review. Appellants filed a motion to set aside submission and correct the record to show that the charge was actually properly endorsed by the judge. This motion is not granted for it would be unavailing to do so since the subject matter of the charge was fully and correctly covered in the Court's oral charge.

[fol. 705] Appellants argue that Charge No. 9, given at the request of plaintiff, authorizes the jury to find for plaintiff upon the basis that unlawful picketing alone is sufficient to create a cause of action. We are not convinced that the charge necessarily must be so construed. Where a charge is susceptible of two constructions, appellate courts will indulge the construction which will sustain rather than condemn. *Birmingham Southern Ry. Co. v. Harrison*, 203 Ala. 284, 82 So. 534; *Alabama Consolidated C. & I. Co. v. Heald*, 171 Ala. 263, 55 So. 181.

The refusal of the court to give defendants' requested charges numbered 40 and 28 are separately assigned as

error and argued. The principles of law contained in these charges were covered in the court's oral charge and in charges given at the request of the defendants; therefore, the refusal to give these charges was not error. *Lindsey v. Barton*, 260 Ala. 419, 70 So. 2d 633; *Atlantic Coast Line RR Co. v. French*, 261 Ala. 306, 74 So. 2d 266; *City of Bessemer v. Clowdus*, 261 Ala. 388, 74 So. 2d 259; *Lackey v. Lackey*, 262 Ala. 45, 76 So. 2d 761.

Charge 33, requested by defendants, is misleading in that it would deny recovery to plaintiff on Count 2 of the complaint if the jury should find that at some indefinite time prior to the strike the defendants believed or had reason to believe no work was available to plaintiff in the plant. Defendants' requested charges numbered 26 and 27 are subject to the same criticism.

Defendants' requested charges 3 and 36 were correctly refused as singling out and placing undue emphasis upon the evidence contained in interrogatories introduced by plaintiff. *Huntsville Knitting Mills v. Butner*, 200 Ala. 288, 76 So. 54; *Lester v. Jacobs*, 212 Ala. 614, 103 So. 682.

Defendants' counsel objected to asking defendants' witnesses Duncan and Starling on cross-examination what their salaries were as officials of defendant union. The testimony was allowed to be introduced by the trial judge as having a bearing on the credibility of the witnesses. It was within the discretion of the trial court to allow this testimony. Wide latitude is allowed on cross-examination to bring out facts tending to show bias on the part of a witness. The extent of such cross-examination is within the sound discretion of the trial court. *Hackins v. State*, 212 [fol. 596] Ala. 606, 103 So. 468; *Drummond v. Drummond*, 212 Ala. 242, 102 So. 112; *Ex parte Ford*, 213 Ala. 410, 104 So. 840; granting certiorari *Ford v. State*, 20 Ala. App. 633, 104 So. 838.

Grounds 95 and 96 of defendants' motion for new trial contend that the following statements by plaintiff's counsel during his closing argument were so grossly improper and prejudicial as to be grounds for granting a new trial:

"The only way that you can reach a labor union and make it sorry for what it has done is through its pocket book because it has no conscience and you can't put it

in jail. The only way you can reach it is through its pocket book."

"My only worry is that you won't return your verdict for enough money. You know the court can reduce your verdict if you return an amount which is too high, but there is no way in the world that anyone can increase your verdict if you make it too low."

There was no objection to the argument at the time it was made. The question of the propriety of the argument was raised for the first time in defendants' motion for a new trial. Therefore, in order to work a reversal, the argument must have been so grossly improper and highly prejudicial that, even if appropriate objection had been interposed, its influence could not have been counteracted by proper action. *Birmingham Railway Light and Power Co. v. Gonzales*, 183 Ala. 273, 61 So. 80; Ann. Cas. 1916 A. 543; *Brotherhood of Railroad Trainmen, et al. v. Jennings*, 232 Ala. 438, 168 So. 173. It does not appear that the arguments are so highly prejudicial and improper as to warrant a reversal. In fact, an argument very similar to the first one listed above was considered by this court in *Tutwiler Coal, Coke and Iron Co. v. Nail*, 141 Ala. 374, 37 So. 634, and was held to be proper.

The excessiveness of the verdict was assigned as grounds for new trial and argued on appeal. Where, as here, the verdict may include punitive damages, the imposition of such damages must be left to the discretion of the jury, whose judgment will not be interfered with unless the amount is so excessive as to show passion or prejudice, or some other improper sentiment. *King v. Dozier*; 252 Ala. 631, 42 So. 2d 254; *Abingdon Mills v. Grogan*, supra; *Powell v. Bingham*, 239 Ala. 515, 196 So. 160, cert. den. 29 Ala. App. 248, 196 So. 154; *Tennessee Coal, Iron & R. Co. v. Aycock*, 248 Ala. 498, 28 So. 2d 417.

Considering that the jury was properly instructed as to punitive damages, and considering the nature of the wrong [fol. 707] complained of, and the necessity of preventing similar wrongs, as the court in *Coleman v. Pepper*, 159 Ala. 310, 49 So. 310, said that we must do, the verdict in this case cannot be held to be excessive.

We find no reversible error in the record; therefore, this case should be, and is, hereby affirmed.

Affirmed.

Lawson, Goodwyn and Merrill, J.J., concur.

[fol. 708] IN THE SUPREME COURT OF ALABAMA
MORGAN CIRCUIT COURT

8 Div. 751

International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C.I.O., an Unincorporated Organization, and Michael Volk,

v.

Paul S. Russell

JUDGMENT—March 22, 1956

Come the parties by attorneys, and the record and matters therein assigned for errors, being argued and submitted and duly examined and understood by the Court, it is considered that in the record and proceedings of the Circuit Court there is no error.

IT IS THEREFORE CONSIDERED, ORDERED, AND ADJUDGED that the judgment of the Circuit Court be and the same is hereby in all things affirmed.

IT IS FURTHER CONSIDERED, ORDERED, AND ADJUDGED that the appellant, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, (UAW-CIO), an Unincorporated Organization, and Michael Volk, and National Surety Corporation, New York, New York, surety on the supersedeas bond, pay the amount of the judgment of the Circuit Court, and ten per centum (10%) damages thereon, and interest, and the costs of appeal of this Court and of the Circuit Court, for which costs let execution issue accordingly.

[fol. 709]

[File endorsement omitted]

IN THE SUPREME COURT OF ALABAMA

[Title omitted]

MOTION FOR REHEARING—Filed April 5, 1956

Come now INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO) and MICHAEL VOLK, Appellants in the above styled cause, and move that the Supreme Court of Alabama grant a rehearing in the above styled cause and that the judgment and opinion rendered and entered on the 22nd day of March, 1956 be reversed, revised and vacated, and move that upon said rehearing the Court enter its judgment reversing the final judgment of the Circuit Court of Morgan County entered in said cause.

Appellants further move and pray that the Court recall its certificate of affirmance from the Circuit Court of Morgan County pending consideration and disposition of the within application for rehearing, and appellants further pray that the within application for rehearing be set down for oral argument before the Court.

As grounds for this motion and application for rehearing appellants show the following:

1.

In reaching its decision and opinion that the Circuit Court of Morgan County had jurisdiction to entertain the cause of action alleged by plaintiff, this Court erred in relying upon the case of *United Construction Workers v. Laburnum Construction Corporation*, 194 Va. 872, 75 S. E. 2d 694, and in ruling that the decision of the United States Supreme Court in the same case (347 U. S. 656), was [fol. 710] applicable and controlling; and in reaching said determination as to jurisdiction the Supreme Court further erred in failing to consider and hold controlling the decisions hereinafter listed, which distinguish said *Laburnum* case, and which are controlling authority to the effect that the State Court is without jurisdiction in the within cause:

Weber v. Anheuser-Busch, Inc., 348 U. S. 468 (March 1955);

Born v. Laube, (CCA 9) 213 Fed. 2d 407; Same case on Rehearing, 214 Fed. 2d 349 (Cert. Den. U. S. Supreme Court 1954, 348 U. S. 855).

McNish v. American Brass Co., 139 Conn. 44, 89 Atl. 2d 566;

Mahoney v. Sailors Union of the Pacific, (Washington Supreme Court) 275 Pac. 2d 440;

Sterling v. Local 438 Liberty Association of Steam and Power Pipe Fitters and Helpers Association, Maryland Court of Appeals, 113 Atl. 2d 389;

Gonzales v. International Association of Machinists, (California District Court of Appeal, Feb. 16, 1956), 37 LRRM 2719;

Plankinton Packing Co. v. Wisconsin Board, 338 U. S. 953;

United Automobile Workers v. O'Brien, 339 U. S. 454;

Garnett v. Teamsters Union, 346 U. S. 485;

Amalgamated Association of Street, etc. Employees v. Wisconsin Board, 340 U. S. 383;

In Re Cory Corporation, 84 NLRB 972;

In Re Sunset Line and Twine Co., 79 NLRB 1487.

2.

In ruling upon Appellants' assignment of error that the verdict was contrary to the great preponderance or the great weight of the evidence (Joint Assignment 78), the Court failed to follow the established rule in Alabama that upon motion for new trial it is the duty of the trial court to set aside a verdict which is contrary to the great preponderance of the evidence, and that on appeal from a [fol. 711] judgment of the trial court on a motion for a new trial it is the province of the Supreme Court to set aside a verdict which is contrary to the great preponderance of the evidence, in that there is not sufficient evidence in the record to authorize a finding that work would have been available for the plaintiff at the premises of his employer even if the alleged improper picketing had not existed.

Barber v. Stephenson, 260 Ala. 151, 69 So. 2d 251.

3.

The Court erred in holding that the trial court did not abuse its discretion in admitting evidence of events transpiring on August 20 and August 22, 1951, separately and severally, and in holding that such evidence was admissible for the purpose of proving the allegations of Count 2 alleging a conspiracy on the authority of *Barber v. Stephenson*, 260 Ala. 151, 69 So. 2d 251. In particular the items of evidence which were improperly admitted are separately and severally the following:

- (1) Photographs of the picket line on August 22, 1951;
- (2) A moving picture of the picket line on August 22, 1951;
- (3) Testimony concerning a locomotive incident on August 20, 1951.

Further, the Court should have considered and followed the following authorities which hold that the trial court must exercise a sound discretion in admitting evidence which will arouse the sympathies or prejudices of the jury rather than throw any real light upon the issue, which exercise of discretion is subject to review and reversal when abused.

City of Anniston v. Simmons, 31 Ala. App. 536, 20 So. 2d 52 (Cert. Den. 246 Ala. 153, 20 So. 2d 54);
Birmingham Baptist Hospital v. Blackwell, 221 Ala. 225; 128 So. 389;
22 Corpus Juris, §1115, p. 914.

[fol. 712]

4.

In holding that no reversible error was shown in connection with plaintiff's unnumbered explanatory charge (Joint Assignment of Error 42), the Court failed to consider the change of law as to procedure resulting from Acts 1943, p. 423 (Title 7, §827 (1) through §827 (6) of the Alabama Code), and improperly found that the subject-matter covered by said charge was fully and correctly covered in the Court's oral charge.

5.

In considering plaintiff's requested Charge #9 (Joint Assignment of Error 41), and in holding that no reversible error was shown in connection with said Charge, the Court erred in holding that the charge was susceptible of two constructions and failed to consider Appellants' contention that said charge omitted to include an essential element of plaintiff's cause of action, and, therefore, authorized the jury to return a verdict for the plaintiff without a preliminary finding that such essential element was shown by the preponderance of the evidence.

6.

In reaching its determination that the verdict in the within cause cannot be held to be excessive the Court failed to consider (1) the lack of proof that work would have been available for the plaintiff if he had reported for work; (2) the fact that the plaintiff's employer told representatives of the appellant union that it would not need hourly employees to work during the strike; (3) the fact that a representative of the plaintiff's employer came to the picket line on July 18, before the plaintiff came to the picket line, and instructed representatives of the appellants how supervisory employees whom it desired to enter the plant could be identified; (4) the fact that there was no rebuttal in the record to the evidence contained in testimony of several witnesses and in interrogatory answers that the plaintiff's employer did not intend to operate the plant during the strike; (5) the fact that the plaintiff's employer made no effort and showed no desire to operate the plant until after the plaintiff, and others, procured a [fol. 713] sufficient number of signatures (250) to a petition requesting that the plant be reopened; (6) the fact that under these circumstances there was no showing that the appellants had any reason to believe that the plaintiff would be caused to lose employment; (7) the fact that under these circumstances there could be no malicious or wilful intent to disregard the plaintiff's right as to working, or (8) the fact that under these circumstances the damages awarded are entirely disproportionate to any

damage the plaintiff may have suffered if he could have worked and to any possible wrong which the appellants may be responsible for.

WHEREFORE, appellants pray that this application and motion for rehearing be filed and considered; that pending such consideration the certificate of affirmance be recalled from the Circuit Court of Morgan County; that this application and motion be set down for oral argument; that upon reconsideration and rehearing this Court vacate and reverse its opinion and judgment of March 22, 1956, and enter its opinion and judgment reversing the judgment of the Circuit Court of Morgan County.

Respectfully submitted,

Adair and Goldthwaite, Thomas S. Adair, J. R. Goldthwaite, Jr., 203 Mark Building, Atlanta 3, Georgia, Harold A. Cranefield, 8000 East Jefferson Avenue, Detroit 14, Michigan, Sherman B. Powell, Second Avenue and Grant Street, Decatur, Alabama, Attorneys for Appellants.

[fol. 716] THE SUPREME COURT OF ALABAMA

[Title omitted]

ORDER OVERRULING APPLICATION FOR REHEARING

—June 21, 1956

IT IS ORDERED, that the application for rehearing filed by the appellants in this cause on April 5, 1956, after being duly examined and considered by the Court, be and the same is hereby overruled: [No opinion written on rehearing].

[JUNE 21, 1956, Certificate of Affirmance and Copy of Opinion reissued to Clerk Morgan Circuit Court upon overruling of application for rehearing.]

[fol. 722] IN THE SUPREME COURT OF ALABAMA

8 Div. 697

Paul S. Russell,

v.

International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C. I. O., an unincorporated organization, et al.

Appeal from Morgan Circuit Court.

OPINION—March 13, 1953

STAKELY, Justice.

This suit was brought by Paul S. Russell (appellant) against International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C. I. O., an unincorporated organization, Howard Hovis, Felton Dyer, Ralph Webster and Michael Volk (appellees). The individuals named are residents of the State of Alabama and are members of the union. The defendants filed a plea to the jurisdiction to which the plaintiff demurred. The court overruled the demurrer to the plea and because of this adverse ruling, the plaintiff took a non-suit and brings this appeal on the record, as authorized by § 819, Title 7, Code of 1940.

The complaint consists of two counts and claims damages of the defendants for unlawfully and maliciously preventing plaintiff from engaging in his employment. Count 1 will appear in the report of the case. Count 2 is similar to count 1, except that it alleges a conspiracy among the defendants in connection with the same matters alleged in count 1.

[fol. 723] An examination of the allegations of count 1 will show that the defendants prevented plaintiff from engaging in his employment by (1) actual force and violence, (2) mass picketing which blocked a public street which was the only means of access to the place of employment

and (3) threats of personal injury and property damage. The damages claimed are for loss of time from employment, mental anguish and punitive damages.

The defendants' plea to the jurisdiction, which will also appear in the report of the case, is based on the following theories: First, that Section 7 of the Federal Act (29 U.S.C.A., § 157) provides that employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities. Second, that Section 8 (b) (1) of the Act (29 U.S.C.A., § 158 (b) (1)), provides that it shall be an unfair labor practice for a labor organization or its agents to restrain or coerce employees in the exercise of the rights guaranteed in Section 7 of the Act. Third, that the use of force and violence in connection with the picketing alleged in the complaint constituted an unfair labor practice under Section 8 (b) (1) (A) of the Act (29 U.S.C.A., § 158 (b) (1) (A)), in that it interfered with the rights of employees to work notwithstanding the strike, a right given them by Section 7 of the Act. Fourth, that Section 10 of the Act (29 U.S.C.A., § 160), conferred jurisdiction upon the National Labor Relations Board to prevent any unfair labor practices listed in Section 8 of the Act.

The allegations of the plea according to the defendants show that the act referred to in the plea gave the National Labor Relations Board exclusive jurisdiction of the controversy alleged in the complaint and deprived any court of jurisdiction of it. The constitutional question is raised that "for the state court to entertain appellant's complaint and grant the relief therein prayed for would be in violation of Article 1, Section 8, Paragraph 3, of the Constitution of the United States, for the reason that said constitutional provision grants to the Congress of the United States exclusive jurisdiction to regulate commerce between the several states, and Congress having undertaken to regulate said commerce by the National Labor Relations Act, [fol. 724] as amended; any action by the state court upon the subject matter therein regulated would be in deroga-

tion of the authority granted to, and exercised by Congress under the said constitutional provision."

The writer feels very much as Justice McClellan felt when he wrote the case of *Western Union Telegraph Co. v. Smith*, 200 Ala. 65, 75 So. 393. He said in effect that he would prefer that the Supreme Court of the United States express its judgment on the question before committing the Supreme Court of Alabama to a profound change in law from what has been regarded as established law in Alabama. His statement was made in connection with a series of cases, cited by appellees in this case, which this court decided in connection with the Acts of Congress dealing with interstate telegraph messages. At one time the state law had permitted a suit to recover damages for mental anguish because of a mistake in or failure of delivery of an interstate message. When the Supreme Court of the United States held, however, that the Federal enactment ousted the state court of jurisdiction in regard to interstate telegraph messages, this court in a series of decisions held that the decision of the Supreme Court of the United States was controlling, the state court had no jurisdiction and the recoverable damages were controlled by the Federal Law.—*Western Union Telegraph Co. v. Beasley*, 205 Ala. 115, 87 So. 858; *Western Union Telegraph Co. v. Barbour*, 206 Ala. 129, 89 So. 299; *Western Union Telegraph Co. v. Speight*, 254 U. S. 17, 41 S. Ct. 11, 65 L. Ed. 104. In one of those cases where it appeared that the Federal Act had ousted the state court of jurisdiction, it was held, for example, that where the plaintiff failed to pay for a repeated message, his damages under the Federal Act were limited to the cost of the telegram, unless the failure to transmit correctly was due to wilful misconduct of the company or to its gross negligence.—*Ex Parte Priester*, 212 Ala. 271, 102 So. 376.

Under the concept in this country of liberty and the pursuit of happiness, every man has the right to pursue a lawful occupation. This right is in the nature of a property right and the authorities in this state hold that an action at law lies for any unlawful interference therewith.—*Bowen v. Morris*, 219 Ala. 689, 123 So. 222; *Local 204 of Textile Workers Union of America v. Richardson*, 245 Ala. 37, 15 So. 2d 578; *Carter v. Knapp Motor Co.*, 243 Ala. 600, 11

So. 2d 383, 144 A. L. R. 1177. Furthermore any person engaged in a lawful pursuit has the right to pass on the public streets without interference, threats or intimidation.—*Hardie-Tynes Mfg. Co. v. Cruse*, 189 Ala. 66, 66 So. 657; *American Steel Foundries v. Tri-City Central Trades Council*, 257 U. S. 184, 42 S. Ct. 72, 66 L. Ed. 189, 27 A. L. R. 360. Furthermore it is a criminal offense in Alabama for one to use force, threats or intimidation to prevent another from engaging in a lawful occupation.—Code of 1940, Tit. 14, § 57; Code of 1940, Tit. 26, §§ 384, 385, Pocket Part; *Hardie-Tynes Mfg. Co. v. Cruse, supra*.

There is no mention in the Federal Act whatsoever of the plaintiff's right to recover damages for torts suffered by him when encountering a mass picketing line and yet the State of Alabama in its Constitution has expressly provided in Section 13, "That all courts shall be open; and that every person, for any injury done him, in his lands, goods, person, or reputation, shall have a remedy by due process of law; and right and justice shall be administered without sale, denial or delay."

In *Marbury v. Madison*, 1 Cranch, 137, 2 L. Ed. 69, the Supreme Court of the United States said:

"The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws whenever he receives an injury. One of the first duties of government is to afford that protection. In Great Britain the king himself is sued in the respectful form of a petition, and he never fails to comply with the judgment of his court."

In *Janney v. Buell*, 55 Ala. 408, this court said:

"It is a fixed principle of the common law, that if a right exists, an appropriate remedy for its enforcement necessarily follows as an incident."

See also *Hardie-Tynes Mfg. Co. v. Cruse*, 189 Ala. 66, 66 So. 657.

Section 7 of the Federal Act (29 U.S.C.A. § 157) is:

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain

collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3)."

Section 8 of the Act (29 U.S.C.A. § 158) defines unfair labor practices of both employers and labor organizations; subsection (b) (1) (A) is the portion of Section 8 here applicable and is as follows:

"(b) It shall be an unfair labor practice for a labor organization or its agents—(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7 * * *."

[fol. 726] In discussing the effect of Section 8 (b) (1) (A) in *Sunset Line & Twine Co.*, 79 NLRB 1487, at 1504, the Board said:

"Under this Section, one of the new statutory provisions in which *union* unfair labor practices are defined and proscribed, the essential elements of a violation are three-fold. There must be (1) restraint or coercion, (2) practiced by a labor organization or its agents, (3) against employees in the exercise of rights guaranteed in Section 7 of the Act."

"In this case the Trial Examiner accepted the General Counsel's premise that the third element is present, namely, the protected right of employees to 'refrain from striking,' that is, to work in the face of a strike.

"We agree that employees enjoy that protected right under the Act, as amended, and that there was interference with its exercise in this case."

What we are saying is that the defendant charged in its plea that the action complained of in the complaint was an unfair labor practice under the Act and to us it appears that the defendants' conduct was an unfair labor practice. The defendant, according to its contention, claims that since it is an unfair labor practice, the National Labor Relations

Board has exclusive jurisdiction to deal with the conduct, but it is the position of the plaintiff that while the acts complained of may be an unfair labor practice, they are still civil torts under the common law and the Federal Act gives the plaintiff no remedy for damages for such wrongs suffered by the plaintiff.

Subsection (a) of Section 10 empowers the Board to prevent any person from engaging in any unfair labor practice. Subsection (c) of Section 10 provides, in part, as follows:

"If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: Provided, That where an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him: And provided further, That in determining whether a complaint shall issue alleging a violation of Section 8 (a) (1) or Section 8 (a) (2), and in deciding such cases, the same regulations and rules of decision shall apply irrespective of whether or not the labor organization affected is affiliated with a labor organization national or international in scope. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order."

According to our understanding the National Labor [fol. 727] Relations Board has consistently held that it does not have jurisdiction to award damages to one situated as the plaintiff in the case at bar for injuries sustained by him from unlawful conduct, such as these defendants are alleged to have committed.—*Colonial Hardwood Flooring*

Co., 84 NLRB 563; *United Mine Workers*, 92 NLRB 916. See also *Progressive Mine Workers of America v. National Labor Relations Board*, 187 F. 2d 298, 307. In other words, it results from the holdings of the board as to its power and jurisdiction that the only action which it could have taken in connection with the alleged acts in this case, was a cease and desist order, with the requirement of posting of notices of the compliance.

So far as we are aware, there are only two instances in which the board may make an order for payment of money from one party to the other: (1) under §10 (c) of the Act, when the Board orders reinstatement with back pay of an employee who has been discharged on account of unfair labor practice defined in §8 (a) (3) and §8 (b) (2) of the Act; (2) when the employer is required to refund to his employees dues withheld from their pay and turned over to an employer-dominated union.—*Virginia Electric & Power Co. v. National Labor Relations Board*, 319 U. S. 533, 63 S. Ct. 1214.

Accordingly since the Board does not have jurisdiction to award damages to the plaintiff for the wrongs alleged in the complaint, if the plea is sustained, the plaintiff has suffered an alleged injury for violation of a recognized right but has no remedy for its redress.

We come now to the test to be applied in determining whether the act deprives state courts of jurisdiction and in this connection we point out again that the act in question does not in express terms deprive any court of jurisdiction and if the matter complained of in the complaint is withdrawn from jurisdiction of state courts, it can only be by implication. The Supreme Court of the United States in *Texas & Pacific Railroad Co. v. Abilene Cotton Oil Co.*, 204 U. S. 426, 27 S. Ct. 350, 51 L. Ed. 553, 9 Ann. Cas. 1075, said:

“As the right to recover, which the court below sustained, was clearly within the principles just stated, and as it is conceded that the act to regulate commerce did not, in so many words abrogate such right, it follows that the contention that the right was taken away by the act to regulate commerce rests upon the

proposition that such result was accomplished by implication. In testing the correctness of this proposition we concede that we must be guided by the principle that repeals by implication are not favored, and, indeed, that a statute will not be construed as taking away a common-law right existing at the date of its enactment, [fol. 728] unless it be found that the pre-existing right is so repugnant to the statute that the survival of such right would in effect deprive the subsequent statute of its efficacy; in other words, render its provisions nugatory."

The Supreme Court of the United States has held that neither the National Labor Relations Act nor the Labor Management Relations Act has deprived the states of their police power to deal with force and violence accompanying strikes in industries affecting interstate commerce.—

Allen-Bradley Local v. Wisconsin Employment Relations Board, 315 U. S. 740, 62 S. Ct. 820, 86 L. Ed. 1154. The holding in that case may be summarized with the statement that the state order enjoining strikers from engaging in mass picketing, etc., is based on two factors: (1) The order of the state board did not deprive any person of any right granted by the Federal Act and (2) the state action did not interfere with the functions of the Federal Board. See also *International Union v. Wisconsin Employment Relations*, 336 U. S. 245, 69 S. Ct. 516, 93 L. Ed. 651; *Southern Bus Lines, Inc. v. Amalgamated Ass'n of Street, Electric, Railway & Motor Coach Employees of America*, 38 So. 2d (Miss.) 765.

In *Faribault Daily News v. International Typographical Union*, 53 N. W. 2d (Minn.) 36, there is an analysis of the various decisions of the Supreme Court of the United States. In this case the Minnesota Court said:

"We have thus considered all the decisions of the Supreme Court of the United States directly applicable to the question presented. Citation of these cases forecloses the argument that might otherwise be made that the passage of the comprehensive federal labor relations act removes the entire field of labor relations from state control, except where jurisdiction is specifically

granted. The court has definitely stated that the federal act is not a police act, and that in areas where the exercise of police power is called for the state and its courts have jurisdiction. In such a case, congress has not protected the union conduct which the state has forbidden, and the conduct is governed by the State."

The foregoing decision seems to clearly hold that the act now under discussion does not interfere with the traditional sovereignty of a state, which would seem to include the power and duty of providing courts for the redress of injuries to the person and property of its citizens. As was said in *Milk Wagon Drivers Union v. Meadowmoor Dairies*, 312 U. S. 287, 61 S. Ct. 552,

"We find nothing in the Fourteenth Amendment that prevents a state if it so chooses from placing confidence in a chancellor's decree and compels it to rely exclusively on a policeman's club."

It has been held that the state has a right to prosecute offenders in its criminal courts for infractions of its laws in [fol. 729] a labor dispute.—*Blue v. State*, 67 N. E. 2d (Ind.) 377.

We, of course, realize that there is a difference between the action of the state in providing a judicial remedy for the redress of wrongs which fall under the exercise of the police powers of the state and of providing redress to persons for a civil tort as for instance violation of rights by unlawful picketing, for the recovery of damages to which they may be entitled. It seems to follow, however, that where the act does not deprive the state of its police power, it certainly does not deprive the state of its judicial power and, therefore, the right of this plaintiff under the constitution of this state to resort to the courts of the state for the vindication of such of his rights as may have been violated, when no remedy is given in the act for redress from such violation, except a cease and desist order.

It is agreed that where the Federal Act takes jurisdiction of the subject matter inadequacies of remedy cannot be considered, since the power lies with Congress to give an adequate remedy. In this connection we refer to *Slocum v.*

Delaware, L. & W. R. Co., 339 U. S. 239, 70 S. Ct. 577, 94 L. Ed. 795, where it was said:

"Our holding here is not inconsistent with our holding in *Moore v. Illinois Central R. Co.*, 312 U. S. 630, 61 S. Ct. 754, 85 L. Ed. 1089. Moore was discharged by the railroad. He could have challenged the validity of his discharge before the Board, seeking reinstatement and back pay. Instead he chose to accept the railroad's action in discharging him as final, thereby ceasing to be an employee, and brought suit claiming damages for breach of contract. As we there held, the Railway Labor Act does not bar courts from adjudicating such cases. A common-law or statutory action for wrongful discharge differs from any remedy which the Board has power to provide, and does not involve questions of future relations between the railroad and its other employees."

In *Steele v. Louisville & Nashville R. Co.*, 323 U. S. 192, 65 S. Ct. 226, 89 L. Ed. 173, the Supreme Court of the United States said:

"Even though the dispute between the railroad and the petitioner were to be heard by the Adjustment Board, that Board could not give the entire relief here sought. * * *

"Whether or not judicial power might be exerted to require the Adjustment Board to consider individual grievances, as to which we express no opinion, we cannot say that there is an administrative remedy available to petitioner or that resort to such proceedings in order to secure a possible administrative remedy, which is withheld or denied, is prerequisite to relief in equity. * * *

"In the absence of any available administrative remedy, the right here asserted, to a remedy for breach of statutory duty of the bargaining representative to represent and act for the members of a craft, is of judicial cognizance. That right would be sacrificed or obliterated if it were without the remedy which courts can give for breach of such a duty or obligation and

which it is their duty to give in cases in which they [fol. 730] have jurisdiction."

See also *Brotherhood of Railroad Trainmen v. Howard*, 343 U. S. 768, 72 S. Ct. 1022.

It must be conceded as was noted in *Texas & Pacific Railway Company v. Abilene Cotton Oil Company*, *supra*, that if the action in the state court is inconsistent with or violates a right given by the Federal Act or if the state action interferes with the administrative authority entrusted by Congress to the Board of National Labor Relations, the state action must be stricken down, because it is repugnant to or destroys or impairs the efficiency of the Federal Act. But in the case at bar it does not appear how the prosecution of the present suit can take away any right guaranteed to any person by the Federal Act. The alleged conduct of the defendants was wrongful and in violation of the laws of Alabama. There is no implication in the Federal Act which grants the defendants immunity for such wrongful conduct. As we have undertaken to say, the Federal Act itself shows that the alleged conduct of the defendants was wrongful and we believe that the mere fact that such conduct is an unfair labor practice, does not under the Act deprive the state court of jurisdiction to award damages for such conduct, there being nothing in the Act to deprive the plaintiff of his rights or to give the plaintiff a forum in which such rights can be adjudicated.

Neither legislative nor judicial action by the state is prohibited by the Act unless it interferes with the function of the National Labor Relations Board or unless it is repugnant to a right granted by the Federal Act.—*Bethlehem Steel Co. v. New York State Labor Relations Board*, 330 U. S. 767, 67 S. Ct. 1026, 91 L. Ed. 1234; *International Union of United Automobile, Aircraft and Agricultural Implement Workers v. O'Brien*, 339 U. S. 454, 70 S. Ct. 781, 94 L. Ed. 978; *Algoma Plywood & Veneer Co. v. Wisconsin Employment Relations Board*, 336 U. S. 301, 69 S. Ct. 584, 93 L. Ed. 691; *Hill v. Florida*, 325 U. S. 538, 65 S. Ct. 1373, 89 L. Ed. 1782. See also *Textile Workers Union v. Arista Mills Co.*, 4 Cir., 193 F. 2d 529. In this last cited case the court said:

"Where, however, substantive rights with respect to such matters as positions or pay are created by bargaining agreements, there is no reason why the courts may not enforce them even though the breach of contract with regard thereto may constitute also an unfair labor practice within the meaning of the Act."

[fol. 731] In *Masetta v. National Bronze & Aluminum Foundry Co.*, 107 N. E. 2d (Ohio App.) 243, which was a class suit by a group of employees against the employer for breach of a collective bargaining agreement, it was contended that the Federal Act deprived the court of jurisdiction. The court said:

"We believe that any doubt as to jurisdiction in this case should be resolved in favor of permitting the door to be open to suits of this character in the state courts, in the absence of a clear and definite contrary declaration by the National Congress, and in the absence of judicial authority to the contrary."

As we have undertaken to show, the National Labor Relations Board has no authority to award damages to one who was wronged as alleged in the complaint in the case at bar. Its only authority to prevent such an unfair labor practice is by the issuance of a cease and desist order. It does not appear how the maintenance of this suit by the plaintiff can interfere with that function of the Board. Whatever may be the outcome of this suit, the Board could and can issue a cease and desist order. A judgment in this suit will not be binding on the Board. The essential elements of res adjudicata would be lacking because this suit is for the enforcement of a private right of the plaintiff and the Board's orders are for the enforcement of public rights. As was said in *Slocum v. Delaware, L. & W. R. Co.*, 339 U. S. 239, 70 S. Ct. 577, 94 L. Ed. 795, "If a court in handling such a case must consider some provision of a collective-bargaining agreement, its interpretation would of course have no binding effect on future interpretations by the Board."

In *Barile v. Fisher and Local No. 302, United Electrical, Radio & Machine Workers of America, C.I.O.*, 197 Misc.

493, 94 N. Y. S. 2d 346, 17 Labor Cases, 76,969, § 65,578, the plaintiff brought suit against a labor organization alleging that it had expelled him by reason of his refusal to pay union dues and had thereby caused him to lose his employment with his employer whose contract with the union contained a maintenance of membership provision, and in addition that the union had maliciously prevented him from obtaining other employment by notifying various other unions of his expulsion. On Motion to dismiss the complaint on the ground that the state court had no jurisdiction, the court said:

“ * * * However, the complaint is not based upon alleged violations of the Federal statute, but is based upon common law tort principles. The fact that the grievance complained of in a common law tort action may also constitute an unfair labor practice under the Federal statute does not deprive the state courts of jurisdiction over the common law tort action. The motion for dismissal for lack of jurisdiction is therefore denied.”

[fol. 732] We do not understand that *Ryan v. Simons*, 100 N. Y. S. 2d 18, 98 N. E. 2d 707, is contrary to the last mentioned decision, because in the case at bar it cannot be said that the plaintiff must first avail himself of the administrative remedy set up by the Federal Act, because, as we have shown, there is no administrative remedy by which the plaintiff can be allowed damages for the wrongs which he is alleged to have suffered.

With no authoritative holding from the Supreme Court of the United States on the matter now before us, it is our view that the court was in error in overruling the demurrer to the plea to the jurisdiction of the state court. We think the demurrer should have been sustained.

It is, accordingly, our conclusion that the court was in error and the judgment of the lower court is accordingly reversed and the cause is remanded.

Reversed and remanded.

All the Justices concur.

[fol. 733] CLERK'S CERTIFICATE TO FOREGOING TRANSCRIPT
(omitted in printing).

[fol. 734] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 19, 1956

The petition herein for a writ of certiorari to the Supreme Court of the State of Alabama is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

IN THE

JOHN T. FEY, Clerk

Supreme Court of the United States

OCTOBER TERM 1956

No.

**INTERNATIONAL UNION, UNITED AUTOMOBILE,
AIRCRAFT AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW-CIO),
An Unincorporated Labor Organization, and
MICHAEL VOLK, An Individual,**

Petitioners,

viii

PAUL S. RUSSELL

Respondent

**PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT
OF ALABAMA**

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IN THE
Supreme Court of the United States

OCTOBER TERM 1956

No.

**INTERNATIONAL UNION, UNITED AUTOMOBILE,
AIRCRAFT AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW-CIO),
An Unincorporated Labor Organization, and
MICHAEL VOLK, An Individual,
Petitioners,**

**vs.
PAUL S. RUSSELL,
Respondent**

**PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT
OF ALABAMA**

International Union, United Automobile, Aircraft, and Agricultural Implement Workers of America, (UAW-CIO), and Michael Volk pray that a Writ of Certiorari issue to review the judgment of the Supreme Court of Alabama, entered in the above entitled case on March 22, 1956, as to which a Motion for Rehearing was denied by that Court by entry dated June 21, 1956.

CITATIONS TO OPINIONS BELOW

The opinion of the Supreme Court of Alabama was entered on March 22, 1956, and is reported at 88 So. 2d 175, in the unofficial reports. The opinion, printed in Appendix B hereto, p. 8a, *infra*,* and appearing at R. 693, has not yet been reported in the official reports. An earlier opinion of the Supreme Court of Alabama in the instant case in an appeal taken by the Respondent, is reported in 258 Ala. 615, 64 So. 2d 384. The earlier opinion is printed in Appendix C hereto, p. 30a, *infra*, and appears at R. 722.

JURISDICTION

The Respondent, Paul S. Russell, filed his complaint for damages in two counts against the Petitioners and other individuals and organizations in the Circuit Court of Morgan County, Alabama, on July 14, 1952 (R. 2-4). The Complaint, as finally amended, leaves only the Petitioners as defendants, all other defendants having been stricken by amendment, and claims, in two counts, damages because of alleged wrongful interference with the Respondent's right to work during a strike (R. 43; Appendix D, p. 46a; R. 51; Appendix D, p. 49a; R. 53-54, Appendix D, p. 58a).

Petitioners asserted in a plea to the jurisdiction before the trial court in their Motion for New Trial, and before the Supreme Court of Alabama that the state court was without jurisdiction to entertain the complaint or to grant the relief prayed for as the exercise of such jurisdiction would be unconstitutional and in derogation of the authority exercised by Congress in the enactment of the Na-

*Appendices follow in separate booklet.

tional Labor Relations Act, as amended and was an interference with the federally protected right under Section 7 of the National Labor Relations Act, as amended, to engage in concerted activities.

The judgment of the Supreme Court of Alabama was entered on March 22, 1956 (R. 708; Appendix B, p. 28a, *infra*). A timely application for rehearing was denied on June 21, 1956 (R. 716, Appendix B, p. 29a, *infra*). The jurisdiction of this court is invoked under 28 U. S. C. para. 1257(3). [Since rights, privileges and immunities are specially set up and claimed under the Constitution and statutes of the United States and are believed to have been improperly denied by the highest court of the State of Alabama.]

The presentation of the Federal questions is discussed in more detail under Statement of the Case, pp. 6-18, *infra*.

QUESTIONS PRESENTED

I.

Whether the State of Alabama through the device of a common law tort action filed by an *employee*, has assumed control of and imposed its regulations upon, the right to strike and the right to refrain from striking guaranteed by Section 7 of the National Labor Relations Act, as amended, in derogation of the holding of this Court in *Amalgamated Association of Street, etc., Employees v. Wisconsin Employment Relations Board*, 340 U. S. 383, 390, note 12, and in other decisions, that the National Labor Relations Board was given exclusive jurisdiction to enforce the rights of *employees* and that the Federal Act had occupied this field to the exclusion of state regulation.

II.

Whether the court of the State of Alabama has jurisdiction to grant redress in damages to an *employee* of an industry affecting interstate commerce for alleged interference with his right to work during a strike when such right is guaranteed and protected by Section 7 of the National Labor Relations Act, as amended, and when Congress in Sections 8 (b) (1) and 10 of that Act "prescribed procedure for dealing with the consequences of (such) tortious conduct already committed."

[Whether the authority granted by Congress to the National Labor Relations Board in Section 10 (e) of the Act to make reparation orders empowers the Board to order a union to make an employee whole for wages allegedly lost because of his having been prevented from working during a strike in violation of Section 8 (b) (1), and if so, is this power in the Board to give redress for past unfair labor practices exclusive.]

III.

Does a charge to the jury that Respondent was entitled to a verdict if the jury found that Respondent was prevented from entering his place of employment for a long period of time during a strike, without further requiring the jury to find that work was available for Respondent at his place of employment during the strike, infringe upon the federally guaranteed right to engage in a lawful strike without pecuniary liability.

¹ *United Construction Workers v. Laburnum Construction Corp.*, 347 U. S. 656, 665.

IV.

Did the Supreme Court of Alabama deny the federally protected right to strike by its decision that the verdict for Respondent was authorized when there was no evidence in the record sufficient to show that work would have been available to Respondent if he had entered his place of employment, and when the evidence demanded the conclusion that the employer closed the place of employment to work because of a lawful strike engaged in by a great majority of employees and not because of alleged improper picketing.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Constitution of the United States:

Article I, Section 8, Clauses 3 and 18 (Commerce Powers)

Article VI, Clause 2 (Federal Supremacy)

Labor Management Relations Act, 1947

(June 23, 1947, Ch. 120, Sec. 1, *et seq.*; 61 Stat. 134, *et seq.*; 29 U. S. C. 141, *et seq.*):

National Labor Relations Act, as amended by *Labor Management Relations Act, 1947* (June 23, 1947, Ch. 120, Title I, Sec. 101; 61 Stat. 136, *et seq.*; 29 U. S. C. 151, *et seq.*):

61 Stat. 136, 29 U. S. C. 141 (b) [LMRA, Sec. 1 (b)]

61 Stat. 140, 29 U. S. C. 157 [NLRA, Sec. 7]

61 Stat. 140, 29 U. S. C. 158 (b) (1) and (2) [NLRA, Sec. 8 (b), (1) and (2)]

61 Stat. 146, 29 U. S. C. 160 (a) and (c) [NLRA, Sec. 10 (a) and (c)]

61 Stat. 151, 29 U. S. C. 163 [NLRA, Sec. 13]

61 Stat. 156, 29 U. S. C. 185 (a) [LMRA, Sec. 301 (a)]

61 Stat. 158, 29 U. S. C. 187 (b) [LMRA, Sec. 303 (b)]

Texts are set out in Appendix A, pp. 3a-7a, *infra*.

STATEMENT OF THE CASE and Presentation of the Federal Questions

By order of the National Labor Relations Board, dated November 21, 1949 (R. 184-6), and by order of the Director of the Tenth Region of the National Labor Relations Board, dated May 4, 1951 (R. 186-7), the Union Petitioner was certified as the exclusive representative of employees of the Calumet and Hecla Consolidated Copper Company (Wolverine Tube Division) in Decatur, Alabama for purposes of collective bargaining. All production and maintenance employees of the Decatur plant comprised the bargaining units thus certified (R. 188).

On July 14, 1952, the Respondent, Paul S. Russell (R. 2) and twenty-nine other employees of Calumet and Hecla (R. 134-139) filed identical damage suits against Petitioners and other organizations and individuals, each complaint claiming \$50,000 damages for alleged interference with the right of such persons to work during a strike at the Decatur, Alabama plant of Calumet and Hecla. On August 15, 1952, the defendants in the Russell action filed their Plea to the Jurisdiction based upon federal preemption (R. 9). By amended complaint, filed December 15, 1952, the Respondent struck all defendants from his complaint except Petitioners and four individual members of the Petitioning Union (R. 43). The defendants, including Petitioners, refiled their Plea to the Jurisdiction to the complaint as

amended and the Respondent filed a demurrer to the plea (R. 45). Upon hearing the trial court overruled the demurrer, the effect of which ruling was to sustain the plea of federal preemption. The Respondent took a judgment of non-suit and appealed the ruling of the trial court to the Supreme Court of Alabama. By decision dated March 13, 1953 (*Russell v. International Union, United Automobile Aircraft and Agricultural Implement Workers of America, CIO*, 258 Ala. 615, 64 S. 2d 384) the Supreme Court of Alabama reversed the decision of the trial court, holding that the National Labor Relations Board was without jurisdiction to redress an interference with the right to work during a strike by an order for the payment of money, and that the State of Alabama retained jurisdiction to entertain the Respondent's action for damages. (R. 722-32, Appendix C, pp. 30a-45a, *infra*.)

First Federal Question

The Respondent's complaint was reinstated in the trial court and Petitioners again filed their Plea to the Jurisdiction. In accordance with the directions of the Supreme Court of Alabama the trial court then sustained the Respondent's demurrer to the plea (R. 53, Appendix D, p. 58a). On the final day of the trial Respondent amended his complaint to strike all individual member defendants leaving only the Petitioning Union and its representative and agent, Michael Volk, as defendants in the action. The Petitioners refiled the Plea to the Jurisdiction and the Respondent refiled his demurrer to the Plea. The demurer was again sustained (R. 54, Appendix D, p. 60a).

The Respondent's complaint for damages, as amended (R. 43, 51, Appendix D, pp. 46a, 49a) was in two counts. The first count claimed damages in the sum of \$50,000, in that

the Union Petitioner was the bargaining agent for certain employees of the Respondent's employer and called a strike to begin on July 18, 1951, and in that the defendants, in order to make the strike effective, established a picket line and prevented the Respondent from entering his place of employment by means of mass picketing and threats of violence, thereby causing him to lose time from his work from July 18, 1951 to August 22, 1951.

Count Two added the allegation that the defendants had conspired together with other persons not made parties to the suit, to prevent plaintiff from entering his place of employment, and that in furtherance of the conspiracy had blocked the street by mass picketing and threats of violence, and had caused Respondent to lose time from his employment for one month.

Both counts claimed compensatory and punitive damages.

The Petitioners' Plea to the Jurisdiction (R. 9; Appendix D, p. 50a) alleged that the Calumet and Hecla Consolidated Copper Company, named as Respondent's employer, was at all times referred to in the complaint an industry which affected interstate commerce within the meaning of the National Labor Relations Act, as amended; that the Petitioning Union, at all times referred to in the complaint, was a labor organization within the meaning of that Act and was the collective bargaining agent for certain employees of the employer; that during the entire period of time referred to in the complaint, the employees represented by the Union were engaged in a strike and maintained a picket line at the entrance to the employer's premises for the purpose of their mutual aid and protection, as was their right and privilege under the provisions of Section 7 of the National Labor Relations Act; that the

activity of said employees represented by the Union and their supporters was the entire foundation of Respondent's complaint for damages; that the Congress of the United States in the exercise of its power over interstate commerce, has provided for the complete administration and enforcement of the rights and duties created and defined by the National Labor Relations Act, and has created an exclusive forum, the National Labor Relations Board, for the administration and enforcement of said rights and duties; that the subject matter of the complaint, if true, was regulated by Section 8 (b) (1) of the National Labor Relations Act, the jurisdiction for the regulation and enforcement of which is granted exclusively to the National Labor Relations Board, together with authority to take such remedial action and grant such relief as the Board shall deem appropriate for the violation of said section, to the exclusion of the exercise of any jurisdiction over the subject matter of the complaint by the state court; that the state court was without jurisdiction over the subject matter of the complaint, or to grant the relief prayed for in the complaint; and that for the court to entertain the complaint and grant the relief prayed for would be in violation of Article II, Section 8, Paragraph 3 of the Constitution of the United States, for the reason that said constitutional provision grants Congress exclusive jurisdiction to regulate commerce between the several states, and, Congress having undertaken to regulate such commerce by the National Labor Relations Act; as amended, any action by the court upon the subject matter therein regulated would be in derogation of the authority granted to and exercised by Congress under said Constitutional provision. The Plea was addressed to each count of the

complaint severally, and prayed that the complaint and each of its counts be dismissed.

The Respondent's demurrer to the Plea (R. 45, Appendix D, p. 55a), asserts that the National Labor Relations Board does not have jurisdiction to award the Respondent relief on account of the acts alleged in the complaint, or to redress the wrongful conduct allegedly committed by Petitioners; that the exercise of jurisdiction by the court could not in any manner impair, qualify or subtract from any of the rights guaranteed and protected by the National Labor Relations Act, as amended; that the state has authority to entertain the common law tort action alleged in the complaint and award damages to the Respondent in the exercise of its police power; and that this remedy before the state court is in addition to the remedy before the National Labor Relations Board and is not inconsistent with the exercise of jurisdiction by the National Labor Relations Board.

After verdict and judgment in the amount of \$10,000 had been entered against the Petitioners, following jury trial (R. 54, Appendix D, p. 60a), and after Motion for New Trial had been overruled (R. 79) the judgment of the trial court sustaining the demurrer to Petitioners' Plea to the Jurisdiction was assigned as error in an appeal to the Supreme Court of Alabama. Assignments of Error Numbers 1, 2 and 4 (R. 653-4, Appendix D, p. 61a) raised the question of Federal preemption before the Supreme Court of Alabama. The Supreme Court of Alabama again entertained the question thus raised, and, after considering the same, again reached the determination that the jurisdiction of the National Labor Relations Board was not exclusive and that the trial court had jurisdiction to entertain the complaint and grant the relief prayed (R. 693-5,

Appendix B, pp. Sa-11a). In reaching its decision the Supreme Court of Alabama relied upon the decision of the Supreme Court of Virginia in *United Construction Workers v. Laburnum Construction Corporation*, 194 Va. 872, 75 S. E. 2d 694, (which had relied upon the previous decision of the Supreme Court of Alabama in this case in reaching its decision), and upon the decision of this Court in the same case (347 U. S. 656). The Supreme Court of Alabama entered its decision on March 22, 1956 (R. 708, Appendix B, p. 28a), and timely application for rehearing was denied on June 21, 1956 (R. 716, Appendix B, p. 29a, *infra*)².

Second Federal Question

The Respondent filed with the trial court a written requested charge (Number 9), which was granted by the trial court and given in charge to the jury. Said Charge No. 9 is as follows:

"9. The Court charges the jury that picketing is lawful when it is for the purpose of observation, or for the purpose of peaceful persuasion, or for the purpose of apprising others of a dispute between employer and employees, but that picketing is unlawful if carried on with intimidation, threats, coercion, force or violence. Picketing is unlawful if such a large number of pickets is utilized as to obstruct a public street and block the entrance to a plant from said street, or if the pickets use threats or abusive language towards others to such an extent as to instill fear of harm or injury in the mind of a reasonable man. The Court further charges the jury that if the defendants in this case stationed or

² The following cases are believed to sustain the presentation of the Federal question. *Building Trades Council v. Kildard Construction Co.*, 346 U. S. 933; *Garner v. Teamsters Union*, 346 U. S. 485; *United Construction Workers v. Laburnum Construction Corp.*, 347 U. S. 656.

caused pickets to be stationed on a public street, as alleged in the complaint, for the purpose of preventing plaintiff and others from entering into their place of employment by means of intimidation, threats, coercion, force or violence, and if you are reasonably satisfied from the evidence that the number of pickets and their conduct as alleged in the complaint was such as to prevent the plaintiff by such unlawful means from entering his place of employment, and as a proximate consequence thereof the plaintiff was denied access to his place of employment for a long period of time, you should return a verdict in favor of the plaintiff." (R. 634, Appendix D, p. 63a.)

The giving of this charge was set forth as cause for a new trial (R. 59), and the motion for new trial was denied (R. 79). Error was assigned upon the giving of this charge to the jury in Assignment of Error Number 41, in the Supreme Court of Alabama (R. 662, Appendix D, p. 63a) upon the contention that the charge permitted the jury to return a verdict of damages for the Respondent without requiring the jury to first find that work would have been available for the Respondent during the period of time when Petitioners were conducting a lawful strike at the premises of Respondent's employer pursuant to their Federally protected right under Section 7 of the National Labor Relations Act as amended, to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection free of liability in damages to employer or employees because of a loss of work as a proximate consequence of such strike. The Supreme Court of Alabama entertained this Assignment of Error and ruled against the Petitioners' contention saying:

"Appellants argue that Charge No. 9, given at the request of plaintiff, authorizes the jury to find

for plaintiff upon the basis that unlawful picketing alone is sufficient to create a cause of action. We are not convinced that the charge necessarily must be so construed. Where a charge is susceptible of two constructions, appellate courts will indulge the construction which will sustain rather than condemn." (R. 705, Appendix B, p. 24a.)

The Supreme Court of Alabama did not explain the alternative construction which supposedly would sustain the propriety of the charge. It is contended that in this construction of the charge the Supreme Court of Alabama infringed upon the Federally protected right to strike.³

Third Federal Question

Among the grounds of the Motion for New Trial, filed after adverse verdict and judgment in the trial court, were contentions that the verdict of the jury was not sustained by the evidence, and was contrary to the great weight of the evidence (R. 55). After the Motion for New Trial was overruled (R. 79), error was assigned upon these grounds of the Motion for New Trial in Assignments of Error Numbers 77 and 78, in the Supreme Court of Alabama (R. 677, Appendix D, p. 64a).

The Supreme Court of Alabama denied the Petitioners' contention that the evidence in the case affirmatively showed that any loss of wages accruing to the Respondent was proximately caused by the strike in which a large majority of employees engaged so that the employer did not attempt to operate its plant during the strike and the Petitioners' contention that there was no evidence in the record to show that the Respondent would have earned

³ The case of *St. Louis, I. M. & B. R. Co. v. Starbird*, 243 U. S. 592, is believed to sustain the presentation of the Federal question.

wages during the strike except for the conduct of the picket line. In passing upon these Assignments of Error the Alabama Supreme Court said:

"Appellants' argument is based on the theory that the plaintiff is not entitled to any recovery against the defendant if plaintiff's loss of working time and wages was due to a closing of the plant by his employer and not due to any action on the part of the defendants which may have prevented plaintiff from crossing the picket line. Appellants argue that the evidence clearly shows that plaintiff's employer closed the plant to all hourly-rated employees pursuant to an agreement between the employer and the union, and that even though plaintiff had been able to cross the picket line no work would have been available to him. The record in this case is very lengthy; making it impracticable to set out the evidence in this opinion. It is sufficient to say that there was evidence introduced on behalf of the plaintiff which contradicts the defendants' evidence, and which, if believed, would justify a verdict for plaintiff." (R. 699, Appendix B, p. 16a.)

In connection with these Assignments of Error the Alabama Supreme Court did not explain what evidence was introduced by the plaintiff which would justify a verdict for him. In connection with a further Assignment of Error, however, the Court did discuss the evidence, this being the only discussion of the evidence contained in its decision, as follows:

"The record reveals that plaintiff introduced evidence tending to prove the following: Plaintiff was a regular employee of the Calumet and Hecla Consolidated Copper Company (Wolverine Tube Division). He worked regularly at an hourly rate of pay and averaged approximately fifty hours a

week for the six months preceding July 18, 1951. On occasions when no work was available, the employees were notified in advance by the company. Plaintiff had not been notified that there would be no work on July 18, 1951, and he and numerous other employees went to the plant on that morning expecting to work. When these employees arrived at the approaches to the plant, they found that a strike was in progress, directed by officials of the defendant union, including defendant Michael Volk. The union placed a picket line across the street leading into the plant. Plaintiff attempted to drive through the picket line; but large numbers of men closed in around his car, making it impossible to go forward. One of the strikers held onto the door handle, and there were shouted threats to turn plaintiff's car over, along with other threatening shouts from the strikers. After some time, plaintiff left the scene and returned to his home. No hourly rated employees were able to cross the picket line until August 22, 1951, when, with the aid of a large number of law enforcement officers, approximately two hundred employees entered the plant and resumed work.

"Frank W. Oakes who was Industrial and Public Relations Director for the plant and who represented the management at a prestrike meeting with the union, denied telling union officials that the plant would be closed to hourly rated employees during the strike."

The Supreme Court of Alabama made no finding that a sufficient number of employees reported to work on July 18, 1951 to enable the employer to operate the plant, or that the Respondent personally would have been afforded work had he entered the plant on the morning the strike began (R. 700, Appendix B, p. 17a).

Concerning whether or not work would have been available to the Respondent had he entered the plant premises during the strike, the record reveals the following uncontradicted facts:

In meetings on July 17, 1951 over four hundred of the employer's total three-shift complement of slightly over five hundred hourly paid employees (R. 95) voted almost unanimously to go on strike (R. 319, 321, 322, 347, 349, 478, 482). All of these four hundred employees supported the strike and participated in picketing (R. 507).

Howard Babis, Company Foreman, testified that he was advised by Mr. Oakes, or some other supervisory official of the Company, that the plant would be closed during the strike (R. 307, 308). The Company stopped charging the furnaces prior to the time the next shift was scheduled to come to work on the morning of the strike and employees were requested by their supervisors to stay and help finish extruding copper billets already in the furnace (R. 370, 371). About 6 o'clock in the morning of July 18, 1951, employee W. A. Bowling was told by his foreman that the plant was going to close during the strike (R. 385).

The Respondent Russell, after the morning the strike began on July 18, went back to the picket line on only two occasions until the plant reopened on August 22, 1951. These visits were for the purpose of observation and he made no effort to enter the plant (R. 110). He did not contact the Company to see if he should come to work but "assumed that there was no work" (R. 109).

Respondent Russell throughout the period following July 18, when the strike began, was engaged in procuring employees to sign petitions addressed to the company to the effect that "if the company will reopen the gates

to the people, we will cross the picket line and return to work" (R. 112), and to the effect that they were willing to return to work on former terms and conditions of employment if the Company would "reopen your plant" (R. 142, 143). Russell testified that he was attempting to get from two hundred to two hundred and fifty employees to sign the back-to-work petition as in his opinion, it would take that many to operate the plant, and he had been advised by his attorney that the Company would not consider reopening the plant until this was done (R. 115).

From the beginning of the strike on July 18, 1951 until the receipt of Russell's back-to-work petition on August 20, the Company made no effort to procure an injunction against mass or excessive picketing, made no effort to bring in materials and did nothing indicating any desire to operate the plant. On August 20 the Company notified all employees by letter that the plant would reopen on August 22 and requested that they return to work (R. 109, 110). On August 20 and 21, 1951 a full page newspaper advertisement was run in the local newspaper advising all employees that the plant would reopen on August 22 and advising them to return to work (R. 105).

The Respondent Russell was employed as an electrician at an hourly rate of pay of \$1.75, and was earning slightly over \$100 per week at the time of the strike (R. 81). He returned to work on August 22, when the plant reopened, after a period of approximately five weeks from the beginning of the strike, having lost less than \$500 in wages (R. 99). Russell was not touched, or injured personally when he attempted to cross the picket line on July 18, and neither was his car damaged in any manner (R. 139).

Russell was "bitterly opposed" to unions (R. 132). When he returned to work he organized an "Industrial Employees' Club" (R. 126). One of the purposes of the Club was "carrying on the employer-employee functions without the intervention of any union" (R. 127). Russell initiated the idea of filing damage suits against the Petitioners and solicited other employees to file similar damage suits (R. 134 *et seq.*) His object was to get as many people as possible to file damage suits (R. 137).

Contentions of the Respondent in the Supreme Court of Alabama that the plaintiff's complaint set forth a cause of action for false imprisonment were discarded by that Court, the Court holding as to the nature of the cause of action alleged:

"We think the complaint states a cause of action for unlawfully and maliciously preventing plaintiff from engaging in his employment." (R. 696, Appendix B, p. 15a.)⁴

⁴ It is contended that, in holding the evidence sufficient to sustain the verdict, the Supreme Court of Alabama denied a Federal right by making a finding which is shown by the record to be without evidence to support it. The following cases are believed to sustain the presentation of this Federal question: *Fiske v. Kansas*, 274 U. S. 380, 385-6; *Creswill v. Grand Lodge*, 225 U. S. 246, 261; *Sterling v. Constantin*, 287 U. S. 378, 398.

REASONS FOR GRANTING THE WRIT

I.

THE DECISION OF THE SUPREME COURT OF ALABAMA IS INCONSISTENT WITH DECISIONS OF THIS COURT AND IS PROBABLY INCORRECT.

(1) This Court has repeatedly and consistently held that the jurisdiction of the National Labor Relations Board to regulate and interbalance the rights of employees protected by Section 7 of the National Labor Relations Act, as amended, is exclusive, and is not to be aided by concurrent efforts of states to afford additional protection.

In *International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, v. O'Brien*, 339 U. S. 454, 456, this Court said:

"Congress has not been silent on the subject of strikes in interstate commerce. In the National Labor Relations Act of 1935, 49 Stat. 449, 29 U. S. C., Sec. 151, as amended by the Labor Management Relations Act, 1947, 61 Stat. 136, 29 U. S. C. (Supp. III) Sec. 141, Congress safeguarded the exercise by employees of 'concerted activities' and expressly recognized the right to strike. It qualified and regulated that right in the 1947 Act."

In that case this Court invalidated the application of the Michigan strike vote law to strikes in industries affecting interstate commerce.

In *Hill v. Florida*, 325 U. S. 538, the Court invalidated the Florida law requiring a license for labor representatives because the law limited the freedom of choice of bargaining representatives by employees and impinged

upon the collective bargaining process protected by the National Labor Relations Act.

In *Bethlehem Steel Company v. New York State Labor Board*, 330 U. S. 887, and in *Plankinton Packing Company v. Wisconsin Employment Relations Board*, 338 U. S. 953, the Court protected the jurisdictional integrity of the National Labor Relations Board as to unit certifications and as to remedies for unfair labor practices against intrusions by state agencies.

Explanatory of these decisions in *Amalgamated Association of Street, Electric Railway, etc. Employees v. Wisconsin Employment Relations Board*, 340 U. S. 383, 390, this Court said in footnote 12:

"Section 7 of the Labor Management Relations Act not only guarantees the right of self organization and the right to strike, but also guarantees to individual employees the right to refrain from any or all of such activities at least in the absence of a union shop or similar contractual arrangement applicable to the individual. Since the N. L. R. B. was given jurisdiction to enforce the rights of the employees, it was clear that the Federal Act had occupied this field to the exclusion of state regulation. *Plankinton* and *O'Brien* both show that states may not regulate in respect to rights guaranteed by Congress in §7."

In *Garner v. Teamsters Union*, 346 U. S. 485, 490, this Court made it clear that the conflict of jurisdiction between federal and state procedures applied to regulation by state courts as well as to state administrative agencies, saying:

"Congress did not merely lay down a substantive rule of law to be enforced by any tribunal competent to apply law generally to the parties. It

went on to confide primary interpretation and application of its rules to a specific and specially constituted tribunal and prescribed a particular procedure for investigation, complaint and notice, and hearing and decision, including judicial relief pending a final administrative order. Congress evidently considered that centralized administration of specially designed procedures were necessary to obtain uniform application of its substantive rules and to avoid these diversities and conflicts likely to result from a variety of local procedures and attitudes toward labor controversies.

* * * A multiplicity of tribunals and a diversity of procedures are quite as apt to produce incompatible or conflicting adjudications as are different rules of substantive law. The same reasoning which prohibits federal courts from intervening in such cases, except by way of review or an application of the federal Board, precludes state courts from doing so. Cf. *Myers v. Bethlehem Shipbuilding Corp.*, 303 U. S. 41; *Amalgamated Utility Workers v. Consolidated Edison Co.*, 309 U. S. 261. And the reasons for excluding state administrative bodies from assuming control of matters expressly placed within the competence of the federal Board also exclude state courts from like action. Cf. *Bethlehem Steel Co. v. New York Board*, 330 U. S. 767."

In the same case the Court pointed out that the conflict in duplicate regulation or jurisdiction between state and federal authorities is primarily a conflict in remedies, and that where a federal remedy has been provided in the public interest, the state remedy for the protection of primarily private rights must yield, as follows:

"Further, even if we were to assume, with petitioners, that distinctly private rights were enforced by the state authorities, it does not follow that

the state and federal authorities may supplement each other in cases of this type. The conflict lies in remedies, not rights. The same picketing may injure both public and private rights. But when two separate remedies are brought to bear on the same activity, a conflict is imminent." (346 U. S. 485, 498.)

* * *

"We conclude that when federal power constitutionally is exerted for the protection of public or private interests, or both, it becomes the supreme law of the land and cannot be curtailed, circumvented or extended by a state procedure merely because it will apply some doctrine of private right. To the extent that the private right may conflict with the public one, the former is superseded." (346 U. S. 485, 500.)

However, the Court has held that the National Labor Relations Act, while regulating interstate commerce in the public interest, creates and protects substantive rights which are not dependent upon state law, (*National Labor Relations Board v. Hearst Publications*, 322 U. S. 111, 123); and that the authority granted to the National Labor Relations Board to protect the rights of individuals is remedial and is not intended for the vindication of public wrongs.

"The Act is essentially remedial. It does not carry a penal program declaring the described unfair labor practices to be crimes. The Act does not prescribe penalties or fines in vindication of public rights or provide indemnity against community losses as distinguished from the protection and compensation of employees. * * * All these measures relate to the protection of the employees and the redress of their grievances, not to the redress of any supposed public injury * * *."

Republic Steel Corp. v. N. L. R. B., 311 U. S. 7, 10-11; Cf. *Consolidated Edison Co. v. N. L. R. B.*, 305 U. S. 197, 235.

(2) This Court has always been careful in its decisions upholding state action which actually or potentially overlaps the subject matter covered by the National Labor Relations Act and the jurisdiction of the National Labor Relations Board, to restrict permissible state action to specific instances where the police power of the state was exercised in an emergency to maintain public safety and order and the use of streets and highways, to incidents where the conduct or subject matter *in judicia* was not regulated or protected by the Federal Act, and to incidents where no parallel remedy is provided before the National Labor Relations Board.

The instant case was not an exercise by the state of its "historic powers over such traditionally local matters as public safety and order and the use of streets and highways." (*Allen-Bradley Local v. Wisconsin Board*, 315 U. S. 740, 749; *Garner v. Teamsters Union*, 346 U. S. 485, 488) such as that which was recently upheld in the case of *United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO, v. Wisconsin Employment Relations Board and Kohler Co.*, ..., U. S. ..., 76 S. Ct. 794 (June 4, 1956). Nor does the present case involve an instance of injurious conduct neither prohibited, regulated nor protected by the Federal Act which would be entirely ungoverned unless governable by the state, such as that which was present in *International Union, UAW-AFL v. Wisconsin Employment Relations Board*, 336 U. S. 245, 254. Nor is it a case such as that before the Court in *United Construction Workers v. Laburnum Construction Corp.*, 347 U. S. 656, 663, where

"Congress has neither provided nor suggested any substitute for the traditional state court procedure for collecting damages for injuries caused by tortious conduct." There the complaining party, or plaintiff, in the court below was an employer whose rights are not attempted to be protected by Congress in Section 7 of the National Labor Relations Act, and whose rights when violated cannot be redressed under Section 8 (b) (1) of the National Labor Relations Act. Here the plaintiff below (Respondent) is an employee whose rights to refrain from striking and to work in the face of a strike are specifically protected by Section 7 of the Act, and to whom a specific remedy is granted by Section 8 (b) (1) of the Act for the violation of these rights.⁵

In the decision of the *Laburnum* case, *supra*, this Court was exceedingly careful to point out that its decision applied only to an employer who had no remedy before the National Labor Relations Board, saying:

"To the extent that Congress prescribed preventive procedure against unfair labor practices, that case recognized that the Act excluded conflicting state procedure to the same end. To the extent, however, that Congress has not prescribed procedure for dealing with the consequences of tortious

⁵ "Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3)." (29 U. S. C. 157.)

"Sec. 8 (b). It shall be an unfair labor practice for a labor organization or its agents—(1) to restrain or coerce (a) employees in the exercise of the rights guaranteed in section 7 * * *." (29 U. S. C. 158 (b) (1)).

conduct already committed, there is no ground for concluding that existing criminal penalties or liabilities for tortious conduct have been eliminated." (347 U. S. 656, 665.)

Again, making it abundantly clear that it did not intend that the *Laburnum* decision should apply to any case in which an administrative remedy was provided by the Federal Act, in *Weber v. Anheuser-Busch, Inc.*, 348 U. S. 468, the Court felt compelled twice to distinguish the *Laburnum* case, saying:

"Finally, *United Construction Workers v. Laburnum Construction Corporation*, 347 U. S. 656, was an action for damages based on violent conduct which the state court found to be a common law tort. While assuming that an unfair labor practice under the Taft-Hartley Act was involved, this Court sustained the state judgment on the theory that there was no compensatory relief under the federal Act and no federal administrative relief with which the state remedy conflicted." (348 U. S. 468, 477.)

• • •

"Our approach was emphasized in *United Construction Workers v. Laburnum Construction Corporation, supra*, where the violent conduct was reached by a remedy having no parallel in, and not in conflict with, any remedy afforded by the federal Act." (348 U. S. 468, 480.)

(3) Under the decisions of this Court the power of the National Labor Relations Board to enter remedial and reparation orders is coextensive with the discretion granted to the Board to take such remedial action as will effectuate the policies of the Act.

The National Labor Relations Board has often held that it is a violation of Section 8 (b) (1) of the Act for a

labor organization or its agents, to interfere by mass picketing, violence or threats of violence, with the right of an employee to work during a strike.⁶ This construction of Section 8 (b) (1) accords with expressions of legislative intent at the time the provision was being considered by Congress,⁷ and with the holding of this Court in footnote 12 to the opinion in *Amalgamated Association of Street, Electric Railway, etc., Employees v. Wisconsin Employment Relations Board*, 340 U. S. 383, 390, *supra*.

The Board, however, has held that it is without power or jurisdiction to enter an award of back pay where the wages lost by the employee were as the result of an interference with his right of ingress to his place of employment, as in the instant case. *Colonial Hardwood*

⁶ E. g. *Sunset Line and Twine Co.*, 79 N. L. R. B. 1487, 1504, where the Board said:

"Under this Section one of the new statutory provisions in which union unfair labor practices are defined and proscribed, the essential elements of a violation are three-fold. There must be (1) restraint or coercion, (2) practiced by a labor organization or its agents, (3) against employees in the exercise of rights guaranteed in Section 7 of the Act."

"In this case the trial examiner accepted the general counsel's premises that the third element is present, namely, the protected right of employees to 'refrain' from striking, that is, to work in the face of the strike."

"We agree that employees enjoy that protected right under the Act, as amended, and that there was interference with its exercise in this case."

Senator Taft said:

"I think when we get to the case of unions there might be the actual act of forceably, by mass picketing, preventing a man from working."

"Let us take the case of mass picketing which absolutely prevents all the office force from going into the office of the plant. That would be a restraint and coercion against those employees, and in-

(Continued on next page)

Flooring Company, Inc., 84 N. L. R. B. 563, 595; *United Mine Workers of America and West Kentucky Coal Co.*, 92 N. L. R. B. 916. This holding of the National Labor Relations Board, which was a ruling of law construing the Act as distinguished from an exercise of discretion in determining what type of order would effectuate the policies of the Act, was relied upon by the Supreme Court of Alabama in its original decision upon the question of Federal preemption in the instant case.

This construction of the Act by the National Labor Relations Board and by the Supreme Court of Alabama is in apparent conflict with the decisions of this Court in *Phelps-Dodge Corporation v. N. L. R. B.*, 313 U. S. 177 and *Virginia Electric and Power Co. v. N. L. R. B.*, 319 U. S. 533. In the former case the Court said:

"To differentiate between discrimination in denying employment and in terminating it, would be a differentiation not only without substance but in defiance of that against which the prohibition of discrimination is directed.

"But, we are told, this is precisely the differentiation Congress has made. It has done so, the argument runs, by not directing the Board 'to take such affirmative action as will effectuate the policies

(Continued from preceding page)

ference with their right to work. * * * The effect of the pending amendment is that the Board may call the union before them, exactly as it has called the employer, and say, 'Here are the rules of the game. You must cease and desist from coercing and restraining the employees who want to work from going to work and earning the money which they are entitled to earn.' The Board may say, 'You can persuade them; you can put up signs; you can conduct any form of propaganda you want to in order to persuade them, but you cannot, by threat or force, or threat of economic reprisal, prevent them from exercising their right to work.' As I see it that is the effect of the amendment." 93 Congressional Record 4562.

of this Act,' *simpliciter*, but, instead, by empowering the Board 'to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act.' To attribute such a function to the participial phrase introduced by 'including' is to shrivel a versatile principle to an illustrative application. We find no justification whatever for attributing to Congress such a casuistic withdrawal of the authority, which but for the illustration, it clearly has given the Board. The word 'including' does not lend itself to such significance." (313 U. S. 177, 188-9.)

And in the latter case the Court said:

"The declared policy of the Act in Section 1 is to prevent, by encouraging and protecting collective bargaining and full freedom of association for workers, the costly dislocation and interruption of the flow of commerce caused by unnecessary industrial strife and unrest. See *Labor Board v. Jones and Laughlin*, 301 U. S. 1. Within this limit the Board has wide discretion in ordering affirmative action; its power is not limited to the illustrative example of one type of permissible affirmative order, namely, reinstatement with or without back pay. *Phelps-Dodge Corp. v. Labor Board*, 313 U. S. 177, 187-89. The particular means by which the effects of unfair labor practices are to be expunged are matters 'for the Board not the court to determine.' *I. A. of M. v. Labor Board*, *supra*, at page 82; *Labor Board v. Link-Belt Co.*, *supra*, at page 600. Here the Board in the exercise of its informed discretion, has expressly determined that reimbursement in full of the checked-off dues is necessary to effectuate the policies of the Act." (319 U. S. 533, 539.)⁸

⁸ The decision of the Board in *Colonial Hardwood Flooring Co., Inc.*, 84 N. L. R. B. 563, 565, upon which the Board relied for its decision, in the *United Mineworkers of America* decision (92 N. L. R. B. 916) is in

In Section 1 (b) of the Labor Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C. 141 (b)), Congress made the following declaration of policy:

"It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, *to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce*, to define and prescribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and *to protect the rights of the public in connection with labor disputes affecting commerce.*" (Emphasis supplied.)

This expression of policy to protect the rights of individual employees is implemented by the legislative history of Section 10(c), especially in House Report 245, on H. R. 3202 (80th Congress, First Session), page 42. The House Report in commenting upon the House Bill which provided

(Continued from preceding page)

direct opposition to these quotations from the decisions of this Court. In the *Colonial Hardwood Flooring* case the Board adopted and followed exactly the reasoning which was repudiated by this Court in the *Phelps Dodge Corp.* decision. The Board attributed to the illustrative phrase in Section 10 (c) of the amended Act: "*Provided, that back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him,*" an intent of Congress to limit the power of the Board. Clearly this proviso illustrates the type of order which might be found appropriate in cases specifically involving discrimination and tenure of terms of the employment relationship between the employee and his employer, and is in no manner a limitation upon the general power of the Board "to take such affirmative action as will effectuate the policies of the Act."

only that the Labor Board should take such affirmative action as would effectuate the policies of the Act, said:

"This Section, dealing with remedies the Board may prescribe contains these three significant changes.

"A. One, in language like that which is applicable to employers who violate Section 8 (a) authorizes the Board to order unions and their adherents who violate Section 8 (b) to cease and desist from unfair labor practices and to take such affirmative action as will effectuate the policies of the Act. * * * Under this clause the Board may also require a union to reimburse an employee whom it causes to lose pay the amount that he loses." (Emphasis supplied.)

Cf., Senate Report 105 on S. 1126 (80th Congress, First Session), p. 26.

The basic remedial power granted to the Board in Section 10 (e) of the amended Act (29 U. S. C. 106(e)) states:

"the Board shall state its findings of fact and shall issue and cause to be served on such persons an order requiring such persons to cease and desist from such unfair labor practice *and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act.*" (Emphasis supplied.)

These powers are identical to those contained in the House amendment which the House explained as giving power to make back pay orders against unions. When this basic power is construed in the light of the previous decisions of this Court, which hold that the words "including reinstatement of employees with or without back pay" are illustrative only, it is clear that the previous power

the Board to enter such remedial and reparation orders would effectuate the policies of the Act was not diminished by the amended Act but was, in fact, extended so as to authorize back pay orders against unions as well as against employers.

(4) In summary we believe that this Court by its previous decisions has clearly pointed out that a state is without jurisdiction to supplement the remedial powers granted to the National Labor Relations Board by court action, and has held that to the extent that Congress has prescribed procedure for dealing with the consequences of tortious conduct already committed, state liabilities for the same tortious conduct have been eliminated. (*United Construction Workers v. Laburnum Construction Corp.*, 347 U. S. 656, 665.)

The question of the remedial powers of the Board to interbalance the rights of strikers and non-strikers is in issue. This is an important question involving the very existence of the right to strike, for such right cannot exist where it is to be subjected to a myriad of interpretations which depend solely upon the understanding of state trial courts as to the extent of the right and upon the prejudices of local juries.*

* Unless the question of the Board's power under Section 10 (c) of the Act to grant remedial relief for violation of Section 8 (b) (1) is decided in this case it may never reach this Court for decision because the Board, having ruled upon the question, will not apply for a review of its own ruling in a Circuit Court of Appeals. Employers, even if they are parties to an unfair labor practice proceeding, will not have such an interest in the question of the liability of a labor organization for unfair labor practices committed upon an employee as to cause them to go to the expense of appellate review. Employes, whose rights are violated, are unable for financial reasons to secure a review of a Labor Board ruling without the aid of the services of the Labor Board itself; and a labor union, in an unfair labor practice proceeding against itself, certainly will not question the propriety of the Board's construction when a reversal of that ruling would render it liable to a back pay award.

From the foregoing it appears that the decision of the Supreme Court of Alabama was contrary to the decisions of this Court as to the remedial powers of the Board and as to the exclusiveness of federal regulation of the rights protected in Section 7 of the Act, and that an important question concerning the construction and application of a federal statute is presented.

II.

THE DECISION BELOW IS INCONSISTENT WITH DECISIONS OF FEDERAL COURTS OF APPEAL AND OF THE COURTS OF OTHER STATES.

In the cases of *Born v. Laube*, 213 Fed. 2d 407 (CA-9) (reh'ng den. 214 F. 2d 349, cert. den. 348 U. S. 855); *McNish v. American Brass Co.*, 139 Conn. 44, 89 Atl. 2d 566, (cert. den. 344 U. S. 913); *Mahoney v. Sailor's Union of the Pacific*, 45 W. 2d 453, 275 Pac. 2d 440 (cert. den. 349 U. S. 915); and *Sterling v. Local 438, Liberty Ass'n of Steam and Power Pipefitters and Helpers Ass'n*, 207 Md. 132, 113 Atl. 2d 389 (cert. den. 350 U. S. 875), each of the courts held that courts are without jurisdiction to entertain a suit for damages against a labor organization, brought by an employee, to recover for union interference with employment on account of non-membership in a labor organization. The reason for the decision in each case was that the National Labor Relations Board was given exclusive jurisdiction to redress the rights of the employee.

In *Born v. Laube*, the Court of Appeals said:

"It is argued that the Board, although having authority to require the offending union to reinstate and financially to make whole the victim of the unfair labor practice, is without power to assess punitive damages; consequently, the view should be

taken that Congress did not intend to preclude the victim from enforcing this private right in an action at common law. However, we think it evident that since the Act provides a procedure for redress and a corresponding remedy, both the procedure and the remedy are exclusive in the absence of an express provision or Board delegation to the contrary. As said in *Nathanson v. N. E. R. B.*, 344 U. S. 25, 27: 'A back pay order is a reparation order designed to vindicate the public policy of the statute by making the employees whole for losses suffered on account of an unfair labor practice (citation). Congress has made the Board the only party entitled to enforce the Act.' A remark of Justice Holmes in *Charleston & Western Carolina Railway Co. v. Varnville Furniture Company*, 237 U. S. 597, 604, though dealing with an unrelated subject, is pertinent here. 'When Congress,' he said, 'has taken the particular subject-matter in hand coincidence is as ineffective as opposition, and a state law is not to be declared a help because it attempts to go farther than Congress has seen fit to go.' (213 F. 2d 407, 410.)

On rehearing the Circuit Court distinguished the case of *United Construction Workers v. Laburnum Construction Corp.*, 347 U. S. 656 saying:

"We have carefully considered the *Laburnum* decision and are of opinion that it is distinguishable inasmuch as the complaining party there, under the Labor Management Act, was wholly without remedy in damages for the tortious conduct of the Union. Here the complaining employee had available the remedy of reinstatement with back pay."

The Supreme Court of the State of Washington also distinguished the *Laburnum* decision in a similar suit for

damages for discrimination as to employment brought by an employee against a union, saying:

“*United Construction Workers v. Laburnum Construction Corporation*, 347 U. S. 656, 74 S. Ct. 833, relied upon by respondent, does not announce a different rule. In that case the state court was held to have jurisdiction, because the act does not provide a procedure under which the plaintiff in that action could have obtained the compensatory relief which he sought—damages for loss of profits due to interference with the performance of the plaintiff’s contracts.” *Mahoney v. Sailor’s Union of the Pacific*, 45 W. 2d 453, 275 Pae. 2d 440, 445.

In the *Sterling* case (207 Md. 132, 113 Atl. 2d 389, 396, the Maryland court stated:

“Here the very rights of a worker which Congress afforded protection by the National Labor Relations Board are sought by appellant to be protected by the courts of Maryland. Congress has provided the exact type of remedy which the state could afford, that is, the Board is empowered not only to require the union to cease its unlawful activity and discrimination, but to pay the injured worker the same amount and type of compensatory damages he could recover in the state court. No question of the police power of the state is involved. It is no answer to say, as the appellant does, that the statute of limitations under the Tart-Hartley Act is six months, whereas in the state court it is three years, or that he cannot recover punitive damages before the Board. The appellant himself has waited several years without seeking any relief from the Board. He should have applied to it as soon as his rights were affronted, and he cannot pull himself up by his boot straps by waiting several years and claiming inadequacy of remedy because of lapse of time.”

In the case of *McNish v. American Brass Company*, 139 Conn. 44, 98 Atl. 2d 566, the Connecticut court wrote an excellent opinion in which, relying on the decisions of this Court, it pointed out that in those fields in which it was intended that the federal legislation should be operative the regulations enacted into law by Congress are exclusive and that one of the phases of labor relations affecting interstate commerce which the National Labor Relations Acts does purport to cover is the matter of union unfair labor practices.

This Court denied certiorari in all four of these cases,¹⁰ in which the conclusion was opposite to the conclusion reached by the Supreme Court of Alabama in the instant case.

There is no logical distinction between the remedial powers of the Board under Section 10 (c) in redressing violations of Section 8 (b) (1) and in redressing violations of Section 8 (b) (2). In each case the remedial power granted to the Board is "if * * * the Board shall be of the opinion that any person named in the complaint has engaged in, or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act." 29 U. S. C. 160 (c).

The decision below is also in apparent conflict with the decision of Judge Parker, speaking for the 4th Circuit,

¹⁰ *McNish v. American Brass Co.*, 344 U. S. 913; *Born v. Laube*, 348 U. S. 855; *Mahoney v. Sailor's Union of the Pacific*, 349 U. S. 915; *Sterling v. Local 438, Liberty Assn., etc.*, 350 U. S. 875.

in the case of *Amazon Cotton Mill Co. v. Textile Workers Union of America*, 167 Fed. 2d 183, 190, when he said:

"Recompense of lost wages on account of an unfair labor practice is a matter for the Labor Board. See *Phelps-Dodge Corp. v. N. L. R. B.*, 313 U. S. 177, 194; *International Union, etc. v. Eagle Picher Co.*, 325 U. S. 340; *Wallace Corp. v. N. L. R. B.*, (4th Cir.) 159 Fed. 2d 952."

III.

AN IMPORTANT QUESTION IS PRESENTED AS TO THE PROTECTION OF THE INTEGRITY OF THE RIGHT TO STRIKE AND THE INTERBALANCING OF THIS RIGHT WITH THE RIGHT OF EMPLOYEES TO WORK IN THE FACE OF A STRIKE; AND AS TO WHETHER CONGRESS THOUGHT THESE MATTERS COULD BEST BE REGULATED BY A SINGLE HARMONIOUS PATTERN OF RULES ADMINISTERED BY AN EXPERT AGENCY AND ENTRUSTED THEM TO THE NATIONAL LABOR RELATIONS BOARD.

This Court has always held that within the realm of the subject matter entrusted to the National Labor Relations Board, the jurisdiction granted to the Board by Congress was intended to be exclusive, and that Congress intended to dispel the confusion which would result from a dispersion of authority and from multiplicity of regulation (*Garner v. Teamsters Union*, 346 U. S. 485; *Amalgamated Association of Street, Electric Railway, etc., Employees v. Wisconsin Employment Relations Board*, 340 U. S. 383).

In *Amalgamated Utility Workers v. Consolidated Edison Co.*, 309 U. S. 261, 264, this Court said:

"To attain its object Congress created a particular agency, the National Labor Relations Board, and established a special procedure. The aim, character, and scope of that special procedure are determina-

tive of the question now before us. Within the range of its constitutional power, Congress was entitled to determine what remedy it would provide, the way that remedy should be sought, the extent to which it should be afforded, and the means by which it should be made effective.

"Congress declared that certain labor practices should be unfair, but it prescribed a particular method by which such practices should be ascertained and prevented. By the express terms of the Act, the Board was made the exclusive agency for that purpose."¹¹

The right of employees to organize and to strike is fundamental right. *National Labor Relations Board v. Jones and Laughlin Steel Corp.*, 301 U. S. 1, 33. Not only the right fundamental, but it is a right guaranteed to employees by Section 7 of the National Labor Relations Act. *Amalgamated Association of Street, Electric Railway, etc., Employees v. Wisconsin Employment Relations Board*, 340 U. S. 383, 390. The existence of a guaranteed right to engage in a lawful strike carries with it the necessary correlative guarantee that such right may be exercised free of liability in damages for economic loss proximately caused thereby to others.¹²

¹¹ The deletion from Section 10 (a) of the amended Act of the word "exclusive" was not intended to vest courts with general jurisdiction over fair labor practices, but merely to recognize the special jurisdiction vested in courts by Section 10, Sub-Sections (j) and (l), and Sections 1 and 303 of the Act. *Amazon Cotton Mill Co. v. Textile Workers Union of America*, 167 Fed. 2d 183, (C. A. 4).

¹² This right is expressed in *Restatement of Torts*, Sec. 809, as follows:

"When concerted action by workers against another causes economic loss to a third person through the effect of the action on the other, the workers are not liable for such loss if their action was not directed against the third person and is privileged as to the other against whom it was directed."

There was no question in this case but that the Respondent lost five weeks time from his work during a *lawful* strike, and that he incurred a consequent loss of wages. The principal factual issue was whether or not this loss of wages was the proximate result of the strike or of picketing in furtherance of the strike. The Petitioners contended that the employer was caused to close its plant because so many of its employees voluntarily participated in the strike that it would have been impossible to operate. The Petitioners further contended below that there was no showing that any work would have been available to the Respondent if he had been permitted to pass through the picket line and enter his place of employment, and that consequently he suffered no loss of wages as a result of excessive picketing.

The jury returned a verdict for Respondent in the amount of \$10,000 (R. 54, Appendix D, p. 60a), which necessarily means that in excess of \$9,500 of the verdict was a regulatory or punitive award.

This is only one of thirty identical cases filed by employees against the union and its agent, Michael Volk.¹³

It is immediately apparent that if there is a federally protected right to strike, such right cannot exist where it is to be subjected to regulation by the opinions and

¹³ Other verdicts have been returned in the amounts of \$8,000 (*McLemore v. International Union and Michael Volk*, #6150 in the Circuit Court of Morgan County, Alabama, new trial granted for improper argument of plaintiff's counsel); \$10,000 (*James W. Thompson v. International Union and Michael Volk*, #6151 in the Circuit Court of Morgan County, appeal pending in Supreme Court of Alabama); and \$18,450 (*N. A. Palmer v. International Union and Michael Volk*, #6152 in the Circuit Court of Morgan County, appeal pending in Supreme Court of Alabama). Of six trials, four have resulted in verdicts as shown and two have been declared mistrials because the jury were unable to agree upon a verdict.

prejudices of jurors in the thousands of state trial courts throughout the nation. Similarly, if there is a right to remain from striking—that is, to work in the face of a strike—such right cannot be uniformly protected by the state trial courts. In one section of the country the predominant public opinion is overwhelmingly in favor of the striking employee and his rights. In such a community an employee, whose right to work during a strike has been interfered with, cannot be protected by jurors who believe that a "scab" is the equivalent of a traitor to his nation, his fellowman and to himself.

In other communities the available jurors know little, if anything, of the trials and pressures which confront the industrial worker in his struggle for existence, and have no sympathy or understanding for the lot of industrial employees who withdraw their services from their employer. In these communities it cannot be expected that a trial jury, who believe all union adherents to be communists, can follow with discernment the niceties of actual causation in the question of whether a strike or aicket line was the proximate cause of a loss of wages to an employee.

Thus, the integrity of the right to strike and the inter-balancing of this right with the right to work in the face of a strike are matters which can only be protected and fairly regulated through the dispassionate investigation by an impartial and expert agency established for this precise purpose.

If these rights cannot be expected to receive uniform protection as a result of multiplicity of tribunals and diversity of procedures before the state and federal courts of equity (*Garner v. Teamsters Union*, 346 U. S. 485; *Aazon Cotton Mill Co. v. Textile Workers Union of*

America, 167 Fed. 2d 183), then it could not be hoped that the rights would receive any semblance of general equality if subjected to thousands of varying interpretations by a myriad of state trial courts and juries.

The very basis of the policy of the National Labor Relations Act is that employees shall be free to engage in concerted activities free from financial responsibility. To hold unions financially liable because of their having rendered aid to employees in the exercise of their *lawful* protected rights is to strike at the very basis of freedom of association and of collective bargaining. The collective bargaining process and the administration of contractual rights of employees is dependent upon the financial integrity of unions. No weapon is more effective to disrupt and block the policy of free collective bargaining expressed by Congress in its labor relations statutes than the power to bankrupt the representatives of employees, especially local unions, under a thousand different authorities and rules varying from those of the National Labor Relations Board which Congress intended should be exclusive.

The problem of filtering from the facts the answer to questions of such complexity, that is whether or not the bounds of protected activity have been exceeded, and if so, have they caused financial loss to employees, can best be left to the skilled and professional discernment of the National Labor Relations Board in its development of substantive rules of permissible and prohibited conduct in labor controversies.

This is not to say that mass picketing, threatening of employees, obstructing streets and highways, and picketing of homes are matters which the state may not prohibit in the exercise of its police power in an emergency. A

state court of equity, under the rules established by this Court in *Milkwagon Drivers Union v. Meadowmoor Dairies*, 312 U. S. 287, 296, can prohibit excessive conduct which breaches the public peace and order without reaching into the field of interbalancing the exercise of rights protected by Section 7, which field was placed by Congress into the hands of the Board.

In conclusion, this is one of those cases concerning the question of the extent to which Congress has withdrawn labor activity from state authority, which "penumbral area can be rendered progressively clear only by the course of litigation." *Weber v. Anheuser-Busch, Inc.*, 348 U. S. 468, 480-1. It presents a question of great importance to unions generally, due to the rising flood of damage actions growing out of strike activity which they are being called upon to defend. The further clarification of this "penumbral area" by this Court is essential for the guidance and conduct of unions generally in litigation of this character.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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Supreme Court of the United States

OCTOBER TERM 1956

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INTERNATIONAL UNION, UNITED AUTOMOBILE,
AIRCRAFT AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW-CIO),
An Unincorporated Labor Organization, and
MICHAEL YORK, An Individual

Petitioners

PAUL S. RUSSELL,
Respondent

APPENDIX TO PETITION FOR A WRIT OF
CERTIORARI TO THE SUPREME
COURT OF ALABAMA

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IN THE
Supreme Court of the United States

OCTOBER TERM 1956

—♦—
No.
—♦—

**INTERNATIONAL UNION, UNITED AUTOMOBILE,
AIRCRAFT AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW-CIO),
An Unincorporated Labor Organization, and
MICHAEL VOLK, An Individual,
Petitioners,**

vs.
**PAUL S. RUSSELL,
Respondent**

—♦—
**APPENDIX TO PETITION FOR A WRIT OF
CERTIORARI TO THE SUPREME
COURT OF ALABAMA**

—♦—
APPENDIX A

—♦—
Part A

—♦—
CONSTITUTIONAL PROVISIONS INVOLVED

—♦—
CONSTITUTION OF THE UNITED STATES

Art. I, Sec. 8, Clauses (3) and (18):
Art. VI, Clause (2):

“Art. I, Sec. 8. (Powers of Congress). The Congress shall

Constitution of the United States

“(3). To regulate commerce with foreign nations, and among the several States, and with the Indian tribes.

• • • •

“(18). To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.”

“Art. VI. Clause 2. Supreme Law.—

“(2). This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”

Part B

STATUTES INVOLVED



LABOR MANAGEMENT RELATIONS ACT, 1947,

and

NATIONAL LABOR RELATIONS ACT, AS AMENDED

61 Stat. 140 ff, 29 U. S. C.

*Section 141 (b), Section 157, Section 158 (b) (1) and (2),
Section 160 (a), and (c), Section 163, Section 185 (a),
Section 187 (b):*

*"Sec. 141 (b). * * **

"It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce."

"Sec. 157. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives

4a *Labor Management Relations Act, 1947, etc.*

of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 88 (a) (3)."

"Sec. 158 (b). It shall be an unfair labor practice for a labor organization or its agents—

"(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;"

"Sec. 160:

"(a) The Board is empowered, as hereinafter provided to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has

been or may be established by agreement, law, or otherwise: Provided, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

* * * * *

“(c) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: Provided, That where an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him: And provided further, That in determining whether a complaint shall issue alleging a violation of section 8(a)

6a. *Labor Management Relations Act, 1947, etc.*

(1) or section 8 (a) (2), and in deciding such case the same regulations and rules of decision shall apply irrespective of whether or not the labor organization affected is affiliated with a labor organization national or international in scope. Such order may further require such person to make reports from time to time showing the extent to which it has complied with such order. If upon the preponderance of the testimony taken the Board shall not be of the opinion that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint. No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay if such individual was suspended or discharged for cause. In case the evidence is presented before a member of the Board, or before an examiner or examiner thereof, such member, or such examiner or examiner as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed report, together with a recommended order, which shall be filed with the Board, and if no exceptions are filed within twenty days after service thereof upon such parties or within such further period as the Board may authorize, such recommended order shall become the order of the Board and become effective as there prescribed.

* * * * *

“Sec. 163. Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way

the right to strike, or to affect the limitations or qualifications on that right."

* * * * *

"Sec. 185 (a). Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

"Sec. 187 (b). Whoever shall be injured in his business or property by reason of any violation of subsection (a) may sue therefore in any district court of the United States subject to the limitations and provisions of section 301 hereof without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit."

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APPENDIX B

Part A

OPINION AND JUDGMENT OF SUPREME COURT OF ALABAMA

Entered March 22, 1956

(R. 693-708)

Livingston, Chief Justice.

This is the second appeal in this cause. Paul S. Russell brought suit against International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C.I.O., an unincorporated organization, and other unions, later stricken by amendment, and Michael Volk and other individuals, who were also stricken by amendment. Michael Volk is a resident of the State of Alabama and a member of the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C.I.O., an unincorporated organization. The defendants filed a plea to the jurisdiction, to which the plaintiff demurred. The court overruled the demurrer to the plea and because of this adverse ruling, the plaintiff took a nonsuit and appeal on the record, as authorized by Sec. 819, Tit. 7, Code 1940. On that appeal, this court held that the Circuit Court of Morgan County, Alabama, did have jurisdiction of the cause of action stated in the complaint and reversed and remanded the cause to the Circuit Court of Morgan County. *Russell v. International Union, Automobile, Aircraft & Agricultural Implement Workers of America, C. I. O., et al.*, 258 Ala. 615, 64 So. 2d 384.

After the cause was remanded to the circuit court, that court set aside its judgment of nonsuit and reinstated the cause on the trial docket. Thereafter, some amendments were made to the complaint, and the complaint as last amended contained two counts which were substantially the same as the counts before this court on former appeal. The plea to the jurisdiction of the court was resiled and demurrers thereto were sustained by the trial court. Demurrers to each count of the complaint being overruled, defendants entered a plea of the general issue in short by consent with leave; etc. The case was then tried to a jury and resulted in a verdict for the plaintiff for \$10,000, and the defendants bring this appeal.

The question of jurisdiction is again raised and argued. Since our decision on former appeal, the Supreme Court of Virginia rendered its decision in the case of *United Construction Workers v. Laburnum Construction Corp.*, 194 Va. 872, 75 S. E. 694. The Virginia Court there said:

"It is settled by recent decisions of the Supreme Court of the United States that by the passage of the National Labor Relations Act of 1935, 49 Stat. 449, 29 U. S. C. A. §151 et seq. as amended by the Labor Management Relations Act of 1947, 61 Stat. 136, 29 U. S. C. A. §141 et seq., Congress has occupied and closed to the States the field of 'regulation of peaceful strikes for higher wages' in industries engaged in interstate commerce. *International Union, etc. v. O'Brien*, 339 U. S. 454, 457, 70 S. Ct. 781, 783, 94 L. Ed. 978; *Amalgamated Ass'n, etc. v. Wisconsin Employment Rel. Bd.*, 340 U. S. 383, 390, 71 S. Ct. 359, 363, 95 L. Ed. 364.

"But this is not to say that by the passage of the Act the courts of the several States have been deprived of their traditional power and jurisdiction to deal with unlawful conduct committed within their

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respective territorial limits during the course of a labor dispute which may affect interstate commerce. The Supreme Court has repeatedly held that an intention of Congress to exclude states from exerting their police power must be clearly manifested.' *Allen-Bradley Local, etc. v. Wisconsin Employment Rel.* Bd., 315 U. S. 740, 749, 62 S. Ct. 820, 825, 86 L. Ed. 1154, and cases there cited. As was said in *Kelly v. State of Washington*, 302 U. S. 1, 10, 58 S. Ct. 87, 98, 82 L. Ed. 3, " * * * the exercise by the state of its police power, which would be valid if not superseded by federal action, is superseded only where the repugnance or conflict is so "direct and positive" that the two acts cannot be "reconciled or consistently stand together." "

"In *Erwin Mills, Inc. v. Textile Workers Union of America*, 234 N. C. 321, 67 S. E. 2d 372, it was held that the federal Act did not deprive the State court of the power by appropriate action to protect persons and property from threatened unlawful acts of violence committed during the course of a strike or labor dispute and injurious to the rights of the State's citizens. To the same effect are, *Williams v. Cedartown Textiles*, 208 Ga. 659, 68 S. E. 2d 705; *International Moulders, etc. v. Texas Foundries*, Tex. Civ. App. 241 S. W. 2d 213; *State ex rel. Allai v. Thatch*, 361 Mo. 190, 234 S. W. 2d 1; *Rice and Holman v. United Elec. Radio & Mach. Workers*, 3 N. J. Super. 258, 65 A. 2d 638.

"The determination of the present question is governed by the same principles. While the Act provides a remedy to restrain the commission of acts constituting unfair labor practices, there are no words which indicate that such remedy is exclusive, or that the Act was designed to deprive an *employer or his employees* of the common-law right of action in a State court for acts of violence or intimidation which may constitute unfair labor practices. Nor does the exercise by the State of its jurisdiction in enforcing such cause of action conflict with any of

the provisions of the Act, or in way impinge upon the rights thereby protected. (Emphasis supplied.)

"Upon substantially this reasoning the Supreme Court of Alabama in *Russell v. International Union*, Ala. Sup. 64 So. 2d 384, decided March 13, 1953, upheld the right of the State court to entertain an action for damages against a labor union for malicious acts of violence and threats of personal injury by the union's agents which prevented plaintiff from engaging in his employment," although such conduct on the part of the union's agents constituted an unfair labor practice under the federal Act.

"The motion to dismiss was properly overruled."

The Supreme Court of the United States in reviewing the *Laburnum* case, *supra*, said:

"The question before us is whether the Labor Management Relations Act, 1947, has given the National Labor Relations Board such exclusive jurisdiction over the subject matter of a common-law tort action for damages as to preclude an appropriate state court from hearing and determining its issues where such conduct constitutes an unfair labor practice under that Act. For the reasons hereafter stated, we hold that it has not." 347 U. S. 656.

These recent cases but fortify our decision on former appeal. The argument that there is a distinction between the *Laburnum* case and the instant case, in that the employer was the plaintiff in the one, and an employee is the plaintiff in the other, is clearly without merit.

The legal sufficiency of each of the two counts of the complaint which were submitted to the jury is assailed on this appeal. As stated above, the complaint was amended after the cause was remanded to the trial court by this court. We have indicated that the amendments worked

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no material change in either of the two counts, but for perfect clarity Count One of the complaint, as it reads giving effect to all amendments to it, will be set out in the report of the case. Count 2 is similar to Count One, except that it alleges a conspiracy among the defendants in connection with the same matters alleged in Count One.

In briefs, both appellants and appellee devote much time and space to the question as to whether the complaint states a cause of action for false imprisonment; also, as to whether it states a cause of action as for a nuisance blocking a public street. But we lay these arguments aside. We think the complaint states a cause of action for unlawfully and maliciously preventing plaintiff from engaging in his employment. We also think that the evidence was sufficient to take the case to the jury on both counts of the complaint.

Two principal theories are advanced as to why the complaint does not state a cause of action for unlawfully and maliciously preventing plaintiff from engaging in his employment. First, that the complaint does not sufficiently allege that plaintiff lost wages as a result of the unlawful picketing. In other words, that it is not alleged that wages would have been available to plaintiff at the plant had he been able to enter it during the period of time complained of. Second, that the names of the agents through whom the union acted are not shown, and that Count 2 is vague and indefinite.

We need not cite authority to the effect that peaceful picketing for a lawful purpose and in a lawful manner is lawful. We judicially know that, ordinarily, union employees will not cross a picket line. It is equally true that union or nonunion employees may lawfully cross a picket line if they desire to do so. But here, these m-

ters are unimportant. The gravamen of the complaint is that defendants unlawfully and maliciously prevented plaintiff from engaging in his employment by unlawful means.

This court recognizes that the right to pursue a lawful occupation is a property right; and the wrongful interference therewith is an actionable wrong. *Sparks v. McCrary*, 156 Ala. 382, 47 So. 332; *Hardie-Tynes Mfg. Co. v. Cruse*, 189 Ala. 66, 66 So. 657; *U. S. Fidelity and Guaranty Co. v. Millonas*, 206 Ala. 147, 89 So. 732; *Bowen v. Morris*, 219 Ala. 689, 123 So. 222; *Hill Grocery Co. v. Carroll*, 223 Ala. 376, 136 So. 789; *Carter v. Knapp Motor Co.*, 243 Ala. 600, 11 So. 2d 383; *Russell v. International Union, etc., supra*; *Lash v. State*, 244 Ala. 48, 14 So. 2d 229; *Alabama State Federation of Labor v. McAdory*, 246 Ala. 1, 18 So. 2d 810.

Sparks v. McCrary, supra, was an action in which plaintiff alleged that defendant wrongfully prevented plaintiff from carrying on his retail business. In reversing a judgment sustaining a demurrer to the complaint, this court said:

“In necessary consequence, an unlawful invasion of or interference with the pursuit or progress of one's trade, profession, or business is a wrong for which an action lies. Holt, C. J., in *Keeble v. Hickeringill*, 11 East, 574, thus states the doctrine: ‘He that hinders another in his trade or livelihood is liable to an action for so hindering him’—though it must be that he intended the broad declaration to be subject to the qualification that the hindrance, the act or conduct so resulting, be wrongful, unlawful, and this, independent, as a general rule, of the motive or intent with which the hindrance was accomplished.”

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Employees may strike and may picket their employer's place of business when it is done in a lawful manner and to accomplish a lawful purpose. *Hotel and Restaurant Employees v. Greenwood*, 249 Ala. 265, 30 So. 2d 696; *Alabama State Federation of Labor v. McAdory*, *supra*; *Thornhill v. Alabama*, 310 U. S. 88, 60 S. Ct. 736, 84 L. Ed. 1093. Picketing must be conducted in a lawful manner and it becomes unlawful when force and violence or the threat of force and violence are used to intimidate employees who are not engaging in the strike. *Hardie-Tynes Mfg. Co. v. Cruse*, *supra*; *Milk Wagon Drivers Union v. Meadowmoor Dairies*, 312 U. S. 287, 61 S. Ct. 552, 85 L. Ed. 836. The use of force and violence or the threat of force and violence against one's person is manifestly unlawful. Furthermore, the Alabama statutes make it unlawful for one to use force, threats or intimidation to prevent another from engaging in a lawful occupation. Tit. 14, Sec. 57, Code 1940; Tit. 26, Secs. 384, 385, Cumulative Pocket Part, Code 1940.

The rules of pleading in Alabama require that all matters essential to plaintiff's right to relief be stated with sufficient certainty, clearness and precision to enable defendant to prepare to defend against the action and so as to allow the court and jury to understand the allegations. *Carable v. Boy Scouts of America*, 250 Ala. 152, 33 So. 2d 461; *Dudley v. Martin*, 241 Ala. 435, 3 So. 2d 7; *Alabama Great Southern R. v. Cardwell*, 171 Ala. 274, 55 So. 185; *Weller and Co. v. Camp*, 169 Ala. 275, 52 So. 929.

The complaint alleges that at the time complained of "Plaintiff was an employee of Calumet & Hecla Consolidated Copper Co. (Wolverine Tube Division) engaged in his said employment at the plant of his said employer in Decatur, Alabama," and the defendants "in order to make the strike effective, and in order to prevent plaintiff and

various other employees of plaintiff's employer, who desired to continue working for their said employer, notwithstanding said strike, from entering their employer's place of business, established and maintained from, to-wit, July 18, 1951 to September 24, 1951, a picket line along and in said public street at a point thereon in close proximity to said plant, consisting of great numbers of persons, some of whom were walking at various and sundry intervals during said period in a close and compact circle across the entire traveled portion of said street, and said pickets, on or about July 18, 1951, by force of numbers, threats of bodily harm to plaintiff and damage to his property, and by force and violence consisting in taking hold of the automobile in which plaintiff was riding and thereby stopping it, and consisting of some of said pickets standing or walking in front of said automobile, blocked said public street and made passage to said plant over the same impossible for plaintiff and for others similarly situated, and defendants thereby willfully and maliciously prevented plaintiff from going to and from said plant and from engaging in his said employment, and caused plaintiff to lose much time from his work, to-wit, from July 18, 1951 to August 22, 1951, and to lose earnings from his employment at said plant which he would have received had he not been prevented as aforesaid from going to and from said plant.
* * *."

We think it would be indulging in hypercriticism to say that the complaint was demurrable because it did not spell out in so many words that work was available to the plaintiff at his employer's plant. The complaint alleges that plaintiff had a job; that he was on his way to it; that defendants unlawfully and maliciously prevented him from getting there, and as a consequence he lost wages on ac-

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count thereof. These allegations of fact are sufficient to show that work was available to plaintiff had he been able to go to his employer's plant. Indeed, defendants under the plea to the general issue in short by consent attempted to prove that no work was available to plaintiff because of the strike at the plant. The evidence on this point was in conflict and resolved against defendants by the jury.

It is not necessary that plaintiff allege the name of the agent or agents through whom the defendant union was acting. *Abigdon Mills v. Grogan*, 167 Ala. 146, 52 So. 596. The criticism that Count 2 is vague and indefinite is also without merit. The demurrer to each count was properly overruled.

Appellants assign as error the action of the trial court in overruling appellants' motion for new trial, which motion recited as grounds that: (1) The verdict is contrary to the evidence, (2) the verdict is not sustained by the evidence, (3) the verdict is contrary to the great weight of the evidence, and (4) the verdict is contrary to law.

Appellants' argument is based on the theory that plaintiff is not entitled to any recovery against the defendants if plaintiff's loss of working time and wages was due to a closing of the plant by his employer and not due to any action on the part of the defendants which may have prevented plaintiff from crossing the picket line. Appellants argue that the evidence clearly shows that plaintiff's employer closed the plant to all hourly-rated employees pursuant to an agreement between the employer and the union, and that even though plaintiff had been able to cross the picket line, no work would have been available to him. The record in this case is very lengthy, making it impractical to set out the evidence in this opinion. It is sufficient to say that there was evidence introduced on

behalf of the plaintiff which contradicts the defendants' evidence, and which if believed, would justify a verdict for plaintiff. Under these circumstances, we will not overrule the trial court's ruling on the motion for new trial; *Cobb v. Malone*, 92 Ala. 630, 9 So. 738; *Smith v. Smith*, 254 Ala. 404, 48 So. 2d 546; *Bell v. Nichols*, 245 Ala. 274, 16 So. 2d 799.

A directed verdict for the defendants can only be justified upon the theory that the plaintiff upon whom rests the burden of proof to establish the right to recover, has wholly failed to adduce evidence to support his cause of action, or that the testimony of plaintiff's own witnesses, without conflict, makes out the defense of the opposing party. If plaintiff makes out a prima facie case, and the defense is dependent upon oral testimony, the court must leave the credibility of the evidence to the jury and not direct a verdict for the defendant. *Schoenith, Inc. v. Forrester*, 260 Ala. 271, 69 So. 2d 454; *Byars v. Alabama Power Co.*, 233 Ala. 533, 172 So. 621, and cases cited therein. In this jurisdiction, there need be only a scintilla of evidence to require reference of the issue raised thereby to the jury. *Barber v. Stephenson*, 260 Ala. 151, 69 So. 2d 251. Appellants contend that plaintiff introduced no evidence to show that plaintiff was damaged by any illegal conduct on the part of the defendants.

The record reveals that plaintiff introduced evidence tending to prove the following: Plaintiff was a regular employee of the Calumet and Hecla Consolidated Copper Company (Wolverine Tube Division). He worked regularly at an hourly rate of pay and averaged approximately 50 hours a week for the six months preceding July 18, 1951. On occasions when no work was available, the employees were notified in advance by the company. Plaintiff had

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not been notified that there would be no work on July 15, 1951, and he and numerous other employees went to the plant on that morning expecting to work. When these employees arrived at the approaches to the plant, they found that a strike was in progress, directed by officials of defendant union, including defendant, Michael Volk. The union placed a picket line across the street leading into the plant. Plaintiff attempted to drive through the picket line, but large numbers of men closed in around his car making it impossible to go forward. One of the strikers held onto the car door handle, and there were shouted threats to turn plaintiff's car over, along with other threatening shouts from the strikers. After some time, plaintiff left the scene and returned to his home. No hourly-rated employees were able to cross the picket line until August 22, 1951, when, with the aid of a large number of law enforcement officers, approximately 200 employees entered the plant and resumed work.

Frank W. Oakes, who was Industrial and Public Relations Director for the plant and who represented the management at a pre-strike meeting with the union, denied telling union officials that the plant would be closed to hourly-rated employees during the strike. Considering the evidence introduced by plaintiff, it was not error to refuse to direct a verdict for defendants.

Appellants assign as error the admission of testimony concerning events transpiring on August 22, 1951 over objection that such testimony was irrelevant, incompetent, immaterial and illegal for the reason that the pleading confined the issue to events occurring within a period which ended on August 21, 1951. The court admitted the evidence for the purpose of proving the allegations of Count 2 of the complaint which alleges a conspiracy to prevent

plaintiff's engaging in his employment. The evidence was admissible for this purpose. In the recent case of *Barber v. Stephenson*, 260 Ala. 151, 69 So. 2d 251, Mr. Justice Simpson, speaking for the court, said:

"It is contended for all the defendants that there was no proof that they had entered into any sort of conspiracy prior to October 3, 1947, the onset date of the alleged combination. Concededly there was no positive evidence to that effect, but a conspiracy need not alone be established by that character of evidence. Indeed, seldom is such the case. It is only by looking to the conduct of the alleged conspirators during the progress of the conspiracy and the end result achieved that usually such a fact is established. And to that end it is proper to consider evidence extending over a considerable period, both before and after the date of the alleged combination and even after its termination, just so the proof has a tendency to establish the ultimate fact. *Scheele v. Union Loan & Finance Co.*, 200 Minn. 554, 274 N. W. 673; *Blakeney v. State*, 31 Ala. App. 154, 13 So. 2d 424, certiorari denied, 244 Ala. 262, 13 So. 2d 430; 15 C. J. S. Conspiracy, §92, p. 1143."

Under the above-stated principles, evidence of actions of the pickets on August 22, 1951 was clearly admissible to prove a conspiracy. On this theory it was also correct to admit evidence of an incident occurring on August 20, 1951, in which strikers used force to prevent a locomotive from pulling cars loaded with raw materials into the plant. All of the incidents have probative value toward the determination of whether or not a conspiracy existed on the part of the defendants.

The question is raised as to the admissibility of a motion picture film which the trial court allowed to be introduced into evidence over defendants' objection. The film purported to show action taking place on the picket line on

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the morning of August 22, 1951, which was the day plaintiff and others returned to work. The picture was taken by the witness McGregor who testified to facts tending to identify the film and verify it as a true representation of the action he saw on that occasion. He also testified as to the technical and mechanical features of producing the film and showing it to the jury in such a way as to accurately portray the events filmed. The introduction of the film was objected to on the grounds that it was a copy and not the original film, that it had been cut and edited, and that it was not a continuous picture, but had been taken at selected intervals during the morning.

The best evidence rule does not apply to this situation so as to make the copy inadmissible. The motion picture does not of itself prove an actual occurrence but the thing reproduced must be established by the testimony of witnesses. *Decamp v. United States*, 10 Fed. 2d 984. The motion picture as exhibited to the jury is the pictorial communication of the witness' testimony and is used to convey the observations of the witness to the jury more fully and accurately than the witness can convey them verbally. *Brown v. State*, 186 Tenn. 378, 210 S. W. 2d 670. The picture is not admissible unless a witness testifies that the picture as exhibited accurately reproduces the objects or actions which he observed. *Pacific Mutual Life Ins. Co. of California v. Marks*, 230 Ala. 417, 161 So. 543; *City of Anniston v. Simmons*, 31 Ala. App. 536, 20 So. 2d 52, cert. den. 246 Ala. 153, 20 So. 2d 54; *Louisville & Nashville R. R. v. Sullivan*, 244 Ala. 485, 13 So. 2d 877; *Kansas City, Memphis & Birmingham R. R. Co. v. Smith*, 90 Ala. 25, 8 So. 43; *Alabama Trunk & Luggage Co. v. Hauer*, 214 Ala. 473, 108 So. 339.

Where a witness testifies that the picture is an accurate reproduction of the matter it purports to portray, the fact that it is not the original film or that it has been cut to the extent of adding titles showing the time certain pictured events occurred does not necessarily make the film inadmissible. These matters affect the credibility and the weight to be given the picture by the jury.

There is no doubt that motion pictures are subject to change and falsification, as is the testimony of any witness, but protection against falsification or misrepresentation lies in the requirement of preliminary proof that the picture is an accurate reproduction of the event which it depicts and in the opportunity for cross-examination of the witness making such proof. *People v. Dabb*, 32 Cal. 2d 491, 197 P. 2d 1; *Heiman v. Market Street Ry. Co.*, 21 Cal. App. 2d 311, 69 P. 2d 178.

The objection that a motion picture film which does not show a continuity of action is misleading and therefore inadmissible is treated in *McGoorty v. Benhart*, 305 Ill. App. 458, 27 N. E. 2d 289, in which the court held that where, as here, the photographer testified how the pictures were taken at intervals and at different times, the jury would not be misled.

The determination of the sufficiency of the preliminary proofs offered to identify the photograph or to show that it is an accurate representation of the objects which it purports to portray is a matter within the sound discretion of the trial court and will not be reviewable except for gross abuse. *McKee v. State*, 253 Ala. 235, 44 So. 2d 781.

It is likewise a matter for the trial court in the exercise of his sound discretion to determine whether the motion picture will aid the jury or tend to confuse or

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prejudice the jury. *Morris v. E. I. duPont de Nemours & Co.*, 346 Mo. 126, 139 S. W. 2d 984; *State v. United Railways & Electric Co. of Baltimore*, 162 Md. 404, 159 A. 916; *Rogers v. City of Detroit, Department of Street Railways*, 286 N. W. 167, 289 Mich. 86; *Denison v. Omaha & C. B. St. Ry. Co.*, 280 N. W. 905, 135 Neb. 307; *Boyarsky v. G. A. Zimmerman Corp.*, 270 N. Y. S. 134, 240 App. Div. 361.

In this case, testimony showed that McGregor operated the motion picture camera taking the picture. He had been trained in photography and the exhibition of motion pictures. He sent the film to the Eastman Laboratory in Chicago to be developed as is the usual practice among those making industrial motion pictures. When it was returned to him, he cut off the unexposed portions on each end of the film and spliced in titles giving the time each pictured event occurred. The film was sent again to the Eastman Laboratory where the copy which was introduced was made. McGregor testified that the film introduced and shown in court is identical to the original, and depicts the objects and action exactly as he took it. McGregor also testified to other details of making and exhibiting the picture which were necessary to a proper foundation for admission of the film but which are unimportant to the question now before us. Captain C. M. Thorsen, of the Alabama Highway Patrol, who was on duty at the scene of the strike on August 22, 1951, also testified that the film as shown to the jury accurately portrayed the action he had observed there on that morning.

It does not appear that the trial judge abused his discretion by allowing this film to be introduced.

Charge No. 2, given at the request of plaintiff, is as follows:

"2. If after considering all of the evidence in this case you are reasonably satisfied therefrom that the plaintiff is entitled to recover, you may include in your verdict what the law knows as punitive or exemplary damages; that is, such amounts as in your judgment and discretion is reasonable as a punishment to the defendants for their conduct on the occasion complained of and to make an example to deter the defendants and others from similar conduct in the future."

The charge is not subject to defendants' ground of objection that it does not instruct that punitive damages may be awarded only if the acts of defendants were found to have been done willfully, wantonly, or maliciously. The charge predicates the awarding of punitive damages on a determination that plaintiff is entitled to a recovery. In order to determine that plaintiff is entitled to a recovery the jury must find that defendants' acts were willfully and maliciously done, since malice is an essential element of the cause of action alleged in plaintiff's complaint. Wherever malice is an ingredient of the cause of action, the plaintiff's recovery may include punitive damages in the sound discretion of the jury. *Penney v. Warren*, 217 Ala. 120, 115 So. 16.

Appellants further argue that the charge was erroneously given because it fails to instruct that punitive damages could be awarded only if the jury determined that plaintiff suffered actual damages. This argument is without merit for the subject is fully covered in the oral charge given by the judge. Such being the case, is any error existed, it is not reversible error. *Marbury Lumber Co. v. Lamont*, 198 Ala. 566, 73 So. 923; *Western*

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Union Telegraph Co. v. Gorman, 237 Ala. 146, 185 So. 743; *McGough Bakeries Corp. v. Reynolds*, 250 Ala. 592, 35 So. 2d 322. The oral charge also cured any possible defect in plaintiff's requested Charge No. 3, given by the court.

Appellants assign as error the giving of an unnumbered explanatory charge at the request of the plaintiff. However, as the charge appears in the transcript of the record, it does not contain the endorsement by the judge as required by Sec. 273, Tit. 7, Code 1940, and, therefore, presents nothing for review. Appellants filed a motion to set aside submission and correct the record to show that the charge was actually properly endorsed by the judge. This motion is not granted for it would be unavailing to do so since the subject matter of the charge was fully and correctly covered in the court's oral charge.

Appellants argue that Charge No. 9, given at the request of plaintiff, authorizes the jury to find for plaintiff upon the basis that unlawful picketing alone is sufficient to create a cause of action. We are not convinced that the charge necessarily must be so construed. Where a charge is susceptible of two constructions, appellate courts will indulge the construction which will sustain rather than condemn. *Birmingham Southern Ry. Co. v. Harrison*, 203 Ala. 284, 82 So. 534; *Alabama Consolidated C. & I. Co. v. Heald*, 171 Ala. 263, 55 So. 181.

The refusal of the court to give defendants' requested charges numbered 40 and 28 are separately assigned as error and argued. The principles of law contained in these charges were covered in the court's oral charge and in charges given at the request of the defendants; therefore, the refusal to give these charges was not error. *Lindsey v. Barton*, 260 Ala. 419, 70 So. 2d 633; *Atlantic Coast Line RR Co. v. French*, 261 Ala. 306, 74 So. 2d

266; *City of Bessemer v. Cloudus*, 261 Ala. 388, 74 So. 2d 259; *Lackey v. Lackey*, 262 Ala. 45, 76 So. 2d 761.

Charge 33, requested by defendants, is misleading in that it would deny recovery to plaintiff on Count 2 of the complaint if the jury should find that at some indefinite time prior to the strike the defendants believed or had reason to believe no work was available to plaintiff in the plant. Defendants' requested charges numbered 26 and 27 are subject to the same criticism.

Defendants' requested charges 3 and 36 were correctly refused as singling out and placing undue emphasis upon the evidence contained in interrogatories introduced by plaintiff. *Huntsville Knitting Mills v. Butner*, 200 Ala. 288, 76 So. 54; *Lester v. Jacobs*, 212 Ala. 614, 103 So. 682.

Defendants' counsel objected to asking defendants' witnesses Duncan and Starling on cross-examination what their salaries were as officials of defendant union. The testimony was allowed to be introduced by the trial judge as having a bearing on the credibility of the witnesses. It was within the discretion of the trial court to allow this testimony. Wide latitude is allowed on cross-examination to bring out facts tending to show bias on the part of a witness. The extent of such cross-examination is within the sound discretion of the trial court. *Hackine v. State*, 212 Ala. 606, 103 So. 468; *Drummond v. Drummond*, 212 Ala. 242, 102 So. 112; *Ex parte Ford*, 213 Ala. 410, 104 So. 840; granting certiorari *Ford v. State*, 20 Ala. App. 633, So. 838.

Grounds 95 and 96 of defendants' motion for new trial contend that the following statements by plaintiffs' counsel during his closing argument were so grossly improper and prejudicial as to be grounds for granting a new trial:

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"The only way that you can reach a labor union and make it sorry for what it has done is through its pocket book because it has no conscience and you can't put it in jail. The only way you can reach it is through its pocket book."

"My only worry is that you won't return your verdict for enough money. You know the court can reduce your verdict if you return an amount which is too high, but there is no way in the world that anyone can increase your verdict if you make it too low."

There was no objection to the argument at the time it was made. The question of the propriety of the argument was raised for the first time in defendants' motion for a new trial. Therefore, in order to work a reversal; the argument must have been so grossly improper and highly prejudicial that, even if appropriate objection had been interposed, its influence could not have been counteracted by proper action: *Birmingham Railway Light and Power Co. v. Gonzales*, 183 Ala. 273, 61 So. 80, Ann. Cas. 1916 A. 543; *Brotherhood of Railroad Trainmen, et al. v. Jennings*, 232 Ala. 438, 168 So. 173. It does not appear that the arguments are so highly prejudicial and improper as to warrant a reversal. In fact, an argument very similar to the first one listed above was considered by this court in *Tutwiler Coal, Coke and Iron Co. v. Nail*, 141 Ala. 374, 37 So. 634, and was held to be proper.

The excessiveness of the verdict was assigned as grounds for new trial and argued on appeal. Where, as here, the verdict may include punitive damages, the imposition of such damages must be left to the discretion of the jury, whose judgment will not be interfered with unless the amount is so excessive as to show passion or prejudice, or some other improper sentiment. *King v. Dozier*, 252 Ala. 631, 42 So. 2d 254; *Abington Mills v.*

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Grogan, supra; Powell v. Bingham, 239 Ala. 515, 196 So. 160, cert. den. 29 Ala. App. 248, 196 So. 154; *Tennessee Coal, Iron & R. Co. v. Aycock*, 248 Ala. 498, 28 So. 2d 417.

Considering that the jury was properly instructed as to punitive damages, and considering the nature of the wrong complained of, and the necessity of preventing similar wrongs, as the court in *Coleman v. Pepper*, 159 Ala. 310, 49 So. 310, said that we must do, the verdict in this case cannot be held to be excessive.

We find no reversible error in the record; therefore, this case should be, and is, hereby affirmed.

Affirmed.

Lawson, Goodwyn and Merrill, JJ., concur.

THE SUPREME COURT OF ALABAMA

Thursday, March 22, 1956

The Court met pursuant to Adjournment.

Present: Chief Justice Livingston and Associate Justices
Lawson, Goodwyn, and Merrill.

8 Div. 751

International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C.I.O., an Unincorporated Organization, and Michael Volk,

v.

Paul S. Russell.

MORGAN CIRCUIT
COURT

Come the parties by attorneys, and the record and matters therein assigned for errors, being argued and submitted and duly examined and understood by the Court, it is considered that in the record and proceedings of the Circuit Court there is no error.

It is therefore considered, ordered, and adjudged that the judgment of the Circuit Court be and the same is hereby in all things affirmed.

It is further considered, ordered, and adjudged that the appellant, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, (UAW-CIO), an Unincorporated Organization, and Michael Volk, and National Surety Corporation, New York, New York, surety on the supersedeas bond, pay the amount of the judgment of the Circuit Court, and ten per

centum (10%) damages thereon, and interest, and the costs of appeal of this Court and of the Circuit Court, for which costs let execution issue accordingly,

Part B

JUDGMENT ON MOTION FOR REHEARING

Entered June 21, 1956

(R. 716)

THE SUPREME COURT OF ALABAMA

Thursday, June 21, 1956

The Court met pursuant to Adjournment

Present: Chief Justice Livingston and Associate Justices
Lawson, Simpson, Stakely, Goodwyn, Merrill, and
Spann.

8 Div. 751

International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C.I.O., an Unincorporated Organization, et al.,

MORGAN CIRCUIT
COURT

v.
Paul S. Russell.

It is ordered, that the application for rehearing filed by the appellants in this cause on April 5, 1956, after being duly examined and considered by the Court, be and the same is hereby overruled. [No opinion written on rehearing].

[June 21, 1956, Certificate of Affirmance and Copy of Opinion reissued to Clerk Morgan Circuit Court upon overruling of application for rehearing.]

APPENDIX C

OPINION OF SUPREME COURT OF ALABAMA

Entered March 13, 1953

(R. 722)

Stakely, Justice.

This suit was brought by Paul S. Russell (appellant) against International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C.I.O., an unincorporated organization, Howard Hovis, Felton Dyer, Ralph Webster and Michael Volk (appellees). The individuals named are residents of the State of Alabama and are members of the union. The defendants filed a plea to the jurisdiction to which the plaintiff demurred. The court overruled the demurrer to the plea and because of this adverse ruling, the plaintiff took a nonsuit and brings this appeal on the record, as authorized by §819, Title 7, Code of 1940.

The complaint consists of two counts and claims damages of the defendants for unlawfully and maliciously preventing plaintiff from engaging in his employment. Count 1 will appear in the report of the case. Count 2 is similar to count 1, except that it alleges a conspiracy among the defendants in connection with the same matters alleged in count 1.

An examination of the allegations of count 1 will show that the defendants prevented plaintiff from engaging in his employment by (1) actual force and violence, (2) mass picketing which blocked a public street which was the only means of access to the place of employment and (3)

threats of personal injury and property damage. The damages claimed are for loss of time from employment, mental anguish and punitive damages.

The defendants' plea to the jurisdiction, which will also appear in the report of the case, is based on the following theories: First, that Section 7 of the Federal Act (29 U. S. C. A., §157) provides that employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities. Second, that Section 8 (b) (1) of the Act (29 U. S. C. A., §158 (b) (1)), provides that it shall be an unfair labor practice for a labor organization or its agents to restrain or coerce employees in the exercise of the rights guaranteed in Section 7 of the Act. Third, that the use of force and violence in connection with the picketing alleged in the complaint constituted an unfair labor practice under Section 8 (b) (1) (A) of the Act (29 U. S. C. A. §158 (b) (1) (A)), in that it interfered with the rights of employees to work notwithstanding the strike, a right given them by Section 7 of the Act. Fourth, that Section 10 of the Act (29 U. S. C. A., §160), conferred jurisdiction upon the National Labor Relations Board to prevent any unfair labor practice listed in Section 8 of the Act.

The allegations of the plea according to the defendants show that the act referred to in the plea gave the National Labor Relations Board exclusive jurisdiction of the controversy alleged in the complaint and deprived any court of jurisdiction of it. The constitutional question is raised that "for the state court to entertain appellant's complaint and grant the relief therein prayed for would be

in violation of Article 1, Section 8, Paragraph 3, of the Constitution of the United States, for the reason that said constitutional provision grants to the Congress of the United States exclusive jurisdiction to regulate commerce between the several states, and Congress having undertaken to regulate said commerce by the National Labor Relations Act, as amended, any action by the state court upon the subject matter therein regulated would be in derogation of the authority granted to, and exercised by, Congress under the said constitutional provision."

The writer feels very much as Justice McClellan felt when he wrote the case of *Western Union Telegraph Co. v. Smith*, 200 Ala. 65, 75 So. 393. He said in effect that he would prefer that the Supreme Court of the United States express its judgment on the question before committing the Supreme Court of Alabama to a profound change in law from what has been regarded as established law in Alabama. His statement was made in connection with a series of cases, cited by appellees in this case, which this court decided in connection with the Acts of Congress dealing with interstate telegraph messages. At one time the state law had permitted a suit to recover damages for mental anguish because of a mistake in or failure of delivery of an interstate message. When the Supreme Court of the United States held, however, that the Federal enactment ousted the state court of jurisdiction in regard to interstate telegraph messages, this court in a series of decisions held that the decision of the Supreme Court of the United States was controlling, the state court had no jurisdiction and the recoverable damages were controlled by the Federal Law. *Western Union Telegraph Co. v. Beasley*, 205 Ala. 115, 87 So. 858; *Western Union Telegraph Co. v. Barbour*, 206 Ala. 129, 89 So. 299; *Western Union Telegraph Co. v. Speight*, 254

U. S. 17, 41 S. Ct. 11, 65 L. Ed. 104. In one of those cases where it appeared that the Federal Act had ousted the state court of jurisdiction, it was held for example that where the plaintiff failed to pay for a repeated message, his damages under the Federal Act were limited to the cost of the telegram, unless the failure to transmit correctly was due to wilful misconduct of the company or to its gross negligence. *Ex parte Priester*, 212 Ala. 271, 102 So. 376.

Under the concept in this country of liberty and the pursuit of happiness, every man has the right to pursue a lawful occupation. This right is in the nature of a property right and the authorities in this state hold that an action at law lies for any unlawful interference therewith. *Bowen v. Morris*, 219 Ala. 689, 123 So. 222; *Local 204 of Textile Workers Union of America v. Richardson*, 245 Ala. 37, 15 So. 2d 578; *Carter v. Knapp Motor Co.*, 243 Ala. 600, 11 So. 2d 383, 144 A. L. R. 1177. Furthermore, any person engaged in a lawful pursuit has the right to pass on the public streets without interference, threats or intimidation. *Hardie-Tynes Mfg. Co. v. Cruse*, 189 Ala. 66, 66 So. 657; *American Steel Foundries v. Tri-City Central Trades Council*, 257 U. S. 184, 42 S. Ct. 72, 66 L. Ed. 189, 27 A. L. R. 360. Furthermore it is a criminal offense in Alabama for one to use force, threats or intimidation to prevent another from engaging in a lawful occupation. Code of 1940, Tit. 14, §57; Code of 1940, Tit. 26, §§384, 385, Pocket Part; *Hardie-Tynes Mfg. Co. v. Cruse, supra*.

There is no mention in the Federal Act whatsoever of the plaintiff's right to recover damages for torts suffered by him when encountering a mass picketing line and yet the State of Alabama in its Constitution has expressly provided in Section 13, "That all courts shall be open;

and that every person, for any injury done him, in his lands, goods, person, or reputation, shall have a remedy by due process of law; and right and justice shall be administered without sale, denial or delay."

In *Marbury v. Madison*, 1 Cranch 137, 2 L. Ed. 69, the Supreme Court of the United States said:

"The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws whenever he receives an injury. One of the first duties of government is to afford that protection. In Great Britain the king himself is sued in the respectful form of a petition, and he never fails to comply with the judgment of his court."

In *Janney v. Buell*, 55 Ala. 408, this court said:

"It is a fixed principle of the common law, that if a right exists, an appropriate remedy for its enforcement necessarily follows as an incident."

See also *Hardie-Tynes Mfg. Co. v. Cruse*, 189 Ala. 66, 66 So. 657.

Section 7 of the Federal Act (29 U. S. C. A., §157) is:

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3)."

Section 8 of the Act (29 U. S. C. A., §158) defines unfair labor practices of both employers and labor organizations; subsection (b) (1) (A) is the portion of Section 8 here applicable and is as follows:

“(b) It shall be an unfair labor practice for a labor organization or its agents—(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7 * * *.”

In discussing the effect of Section 8 (b) (1) (A) in *Sunset Line & Twine Co.*, 79 N. L. R. B. 1487, at 1504, the Board said:

“Under this Section, one of the new statutory provisions in which *union* unfair labor practices are defined and proscribed, the essential elements of a violation are three-fold. There must be (1) restraint or coercion, (2) practiced by a labor organization or its agents, (3) against employees in the exercise of rights guaranteed in Section 7 of the Act.

“In this case the Trial Examiner accepted the General Counsel’s premise that the third element is present, namely, the protected right of employees to ‘refrain from striking,’ that is, to work in the face of a strike.

“We agree that employees enjoy that protected right under the Act, as amended, and that there was interference with its exercise in this case.”

What we are saying is that the defendant charged in its plea that the action complained of in the complaint was an unfair labor practice under the Act and to us it appears that the defendants’ conduct was an unfair labor practice. The defendant, according to its contention, claims that since it is an unfair labor practice, the National Labor Relations Board has exclusive jurisdiction

to deal with the conduct, but it is the position of the plaintiff that while the acts complained of may be an unfair labor practice, they are still civil torts under the common law and the Federal Act gives the plaintiff no remedy for damages for such wrongs suffered by the plaintiff.

Subsection (a) of Section 10 empowers the Board to prevent any person from engaging in any unfair labor practice. Subsection (c) of Section 10 provides, in part, as follows:

"If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act; Provided, That where an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him: And provided further, That in determining whether a complaint shall issue alleging a violation of Section 8 (a) (1) or Section 8 (a) (2), and in deciding such cases, the same regulations and rules of decision shall apply irrespective of whether or not the labor organization affected is affiliated with a labor organization national or international in scope. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order."

According to our understanding the National Labor Relations Board has consistently held that it does not have jurisdiction to award damages to one situated as the plaintiff in the case at bar for injuries sustained by him

from unlawful conduct, such as these defendants are alleged to have committed. *Colonial Hardwood Flooring Co.*, 84 N. L. R. B. 563; *United Mine Workers*, 92 N. L. R. B. 916. See also *Progressive Mine Workers of America v. National Labor Relations Board*, 187 F. 2d 298, 307. In other words, it results from the holdings of the board as to its power and jurisdiction that the only action which could have taken in connection with the alleged acts in this case, was a cease and desist order, with the requirement of posting of notices of the compliance:

So far as we are aware, there are only two instances in which the board may make an order for payment of money from one party to the other: (1) under §10 (e) of the Act, when the Board orders reinstatement with back pay of an employee who has been discharged on account of unfair labor practice defined in §8 (a) (3) and §8 (b) (2) of the Act; (2) when the employer is required to refund to his employees dues withheld from their pay and turned over to an employer dominated union. *Virginia Electric & Power Co. v. National Labor Relations Board*, 319 U. S. 533, 63 S. Ct. 1214.

Accordingly since the Board does not have jurisdiction to award damages to the plaintiff for the wrongs alleged in the complaint, if the plea is sustained, the plaintiff has suffered an alleged injury for violation of a recognized right but has no remedy for its redress.

We come now to the test to be applied in determining whether the act deprives state courts of jurisdiction and in this connection we point out again that the act in question does not in express terms deprive any court of jurisdiction and if the matter complained of in the complaint withdrawn from jurisdiction of state courts, it can

only be by implication. The Supreme Court of the United States in *Texas & Pacific Railroad Co. v. Abilene Cotton Oil Co.*, 204 U. S. 426, 27 S. Ct. 350, 51 L. Ed. 553, 9 Ann. Cas. 1075, said:

"As the right to recover, which the court below sustained, was clearly within the principles just stated, and as it is conceded that the act to regulate commerce did not, in so many words abrogate such right, it follows that the contention that the right was taken away by the act to regulate commerce rests upon the proposition that such result was accomplished by implication. In testing the correctness of this proposition we concede that we must be guided by the principle that repeals by implication are not favored, and, indeed, that a statute will not be construed as taking away a common-law right existing at the date of its enactment, unless it be found that the pre-existing right is so repugnant to the statute that the survival of such right would in effect deprive the subsequent statute of its efficacy; in other words, render its provisions nugatory."

The Supreme Court of the United States has held that neither the National Labor Relations Act nor the Labor Management Relations Act has deprived the states of their police power to deal with force and violence accompanying strikes in industries affecting interstate commerce. *Allen-Bradley Local v. Wisconsin Employment Relations Board*, 315 U. S. 740, 62 S. Ct. 820, 86 L. Ed. 1154. The holding in that case may be summarized with the statement that the state order enjoining strikers from engaging in mass picketing, etc., is based on two factors: (1) The order of the state board did not deprive any person of any right granted by the Federal Act and (2) the state action did not interfere with the functions of the Federal Board. See also *International Union v. Wisconsin Employment Relations*, 336 U. S. 245, 69 S. Ct. 516,

93 L. Ed. 651; *Southern Bus Lines, Inc. v. Amalgamated Ass'n of Street, Electric, Railway & Motor Coach Employees of America*, 38 So. 2d (Miss.) 765.

In *Faribault Daily News v. International Typographical Union*, 53 N. W. 2d (Minn.) 36, there is an analysis of the various decisions of the Supreme Court of the United States. In this case the Minnesota Court said:

"We have thus considered all the decisions of the Supreme Court of the United States directly applicable to the question presented. Citation of these cases forecloses the argument that might otherwise be made that the passage of the comprehensive federal labor relations act removes the entire field of labor relations from state control, except where jurisdiction is specifically granted. The court has definitely stated that the federal act is not a police act, and that in areas where the exercise of police power is called for the state and its courts have jurisdiction. In such a case, congress has not protected the union conduct which the state has forbidden, and the conduct is government by the State."

The foregoing decision seems to clearly hold that the act now under discussion does not interfere with the traditional sovereignty of a state, which would seem to include the power and duty of providing courts for the redress of injuries to the person and property of its citizens. As was said in *Milk Wagon Drivers Union v. Meadowmoor Dairies*, 312 U. S. 287, 61 S. Ct. 552,

"We find nothing in the Fourteenth Amendment that prevents a state if it so chooses from placing confidence in a chancellor's decree and compels it to rely exclusively on a policeman's club."

It has been held that the state has a right to prosecute offenders in its criminal courts for infractions of its laws in a labor dispute. *Blue v. State*, 67 N. E. 2d. (Ind.) 377.

We, of course, realize that there is a difference between the action of the state in providing a judicial remedy for the redress of wrongs which fall under the exercise of the police powers of the state and of providing redress to persons for a civil tort as for instance violation of rights by unlawful picketing, for the recovery of damages to which they may be entitled. It seems to follow, however, that where the act does not deprive the state of its police power, it certainly does not deprive the state of its judicial power and, therefore, the right of this plaintiff under the constitution of this state to resort to the courts of the state for the vindication of such of his rights as may have been violated, when no remedy is given in the act for redress from such violation, except a cease and desist order.

It is argued that where the Federal Act takes jurisdiction of the subject matter inadequacies of remedy cannot be considered, since the power lies with Congress to give an adequate remedy. In this connection we refer to *Slocum v. Delaware, L. & W. R. Co.*, 339 U. S. 239, 70 S. Ct. 577, 94 L. Ed. 795, where it was said:

"Our holding here is not inconsistent with our holding in *Moore v. Illinois Central R. Co.*, 312 U. S. 630, 61 S. Ct. 754, 85 L. Ed. 1089. Moore was discharged by the railroad. He could have challenged the validity of his discharge before the Board, seeking reinstatement and back pay. Instead he chose to accept the railroad's action in discharging him as final, thereby ceasing to be an employee, and brought suit claiming damages for breach of contract. As we there held, the Railway Labor Act does not bar courts from adjudicating such cases. A common-law or statutory action for wrongful dis-

charge differs from any remedy which the Board has power to provide, and does not involve questions of future relations between the railroad and its other employees."

In *Steele v. Louisville & Nashville R. Co.*, 323 U. S. 192, 65 S. Ct. 226, 89 L. Ed. 173, the Supreme Court of the United States said:

"Even though the dispute between the railroad and the petitioner were to be heard by the Adjustment Board, that Board could not give the entire relief here sought. * * *

"Whether or not judicial power might be exerted to require the Adjustment Board to consider individual grievances, as to which we express no opinion, we cannot say that there is an administrative remedy available to petitioner or that resort to such proceedings in order to secure a possible administrative remedy, which is withheld or denied, is prerequisite to relief in equity. * * *

"In the absence of any available administrative remedy, the right here asserted, to a remedy for breach of statutory duty of the bargaining representative to represent and act for the members of a craft, is of judicial cognizance. That right would be sacrificed or obliterated if it were without the remedy which courts can give for breach of such a duty or obligation and which it is their duty to give in cases in which they have jurisdiction."

See also *Brotherhood of Railroad Trainmen v. Howard*, 343 U. S. 768, 72 S. Ct. 1022.

It must be conceded as was noted in *Texas & Pacific Railway Company v. Abilene Cotton Oil Company, supra*, that if the action in the state court is inconsistent with or violates a right given by the Federal Act or if the state action interferes with the administrative authority en-

trusted by Congress to the Board of National Labor Relations, the state action must be stricken down, because it is repugnant to or destroys or impairs the efficiency of the Federal Act. But in the case at bar it does not appear how the prosecution of the present suit can take away any right guaranteed to any person by the Federal Act. The alleged conduct of the defendants was wrongful and in violation of the laws of Alabama. There is no implication in the Federal Act which grants the defendants immunity for such wrongful conduct. As we have undertaken to say, the Federal Act itself shows that the alleged conduct of the defendants was wrongful and we believe that the mere fact that such conduct is an unfair labor practice, does not under the Act deprive the state court of jurisdiction to award damages for such conduct, there being nothing in the Act to deprive the plaintiff of his rights or to give the plaintiff a forum in which such rights can be adjudicated.

Neither legislative nor judicial action by the state is prohibited by the Act unless it interferes with the function of the National Labor Relations Board or unless it is repugnant to a right granted by the Federal Act. *Bethlehem Steel Co. v. New York State Labor Relations Board*, 330 U. S. 767, 67 S. Ct. 1026, 91 L. Ed. 1234; *International Union of United Automobile, Aircraft and Agricultural Implement Workers v. O'Brien*, 339 U. S. 454, 70 S. Ct. 781, 94 L. Ed. 978; *Algoma Plywood & Veneer Co. v. Wisconsin Employment Relations Board*, 336 U. S. 301, 69 S. Ct. 584, 93 L. Ed. 691; *Hill v. Florida*, 325 U. S. 538, 65 S. Ct. 1373, 89 L. Ed. 1782. See also *Textile Workers Union v. Arista Mills Co.*, 4 Cir., 193 F. 2d 529. In this last cited case the court said:

"Where, however, substantive rights with respect to such matters as positions or pay are created by bargaining agreements, there is no reason why the courts may not enforce them even though the breach of contract with regard thereto may constitute also an unfair labor practice within the meaning of the Act."

In *Masetta v. National Bronze & Aluminum Foundry Co.*, 107 N. E. 2d (Ohio App.) 243, which was a class suit by a group of employees against the employer for breach of a collective bargaining agreement, it was contended that the Federal Act deprived the court of jurisdiction. The court said:

"We believe that any doubt as to jurisdiction in this case should be resolved in favor of permitting the door to be open to suits of this character in the state courts, in the absence of a clear and definite contrary declaration by the National Congress, and in the absence of judicial authority to the contrary."

As we have undertaken to show, the National Labor Relations Board has no authority to award damages to one who was wronged as alleged in the complaint in the case at bar. Its only authority to prevent such an unfair labor practice is by the issuance of a cease and desist order. It does not appear how the maintenance of this suit by the plaintiff can interfere with that function of the Board. Whatever may be the outcome of this suit, the Board could and can issue a cease and desist order. A judgment in this suit will not be binding on the Board. The essential elements of res adjudicata would be lacking because this suit is for the enforcement of a private right of the plaintiff and the Board's orders are for the enforcement of public rights. As was said in *Slocum v. Delaware, L. & W. R. Co.*, 339 U. S. 239, 70 S. Ct. 577, 94 L. Ed. 795, "If a court

in handling such a case must consider some provision of a collective-bargaining agreement, its interpretation would of course have no binding effect on future interpretations by the Board'.

In *Burile v. Fisher and Local No. 302, United Electrical Radio & Machine Workers of America, C.I.O.*, 197 Misc. 493, 94 N. Y. S. 2d 346, 17 Labor Cases, 76,969, §65,578, the plaintiff brought suit against a labor organization alleging that it had expelled him by reason of his refusal to pay union dues and had thereby caused him to lose his employment with his employer whose contract with the union contained a maintenance of membership provisions, and in addition that the union had maliciously prevented him from obtaining other employment by notifying various other unions of his expulsion. On motion to dismiss the complaint on the ground that the state court had no jurisdiction, the court said:

"* * * However, the complaint is not based upon alleged violations of the Federal statute, but is based upon common law tort principles. The fact that the grievance complained of in a common law tort action may also constitute an unfair labor practice under the Federal statute does not deprive the state courts of jurisdiction over the common law tort action. The motion for dismissal for lack of jurisdiction is therefore denied."

We do not understand that *Ryan v. Simons*, 100 N. Y. S. 2d 18, 98 N. E. 2d 707, is contrary to the last mentioned decision, because in the case at bar it cannot be said that the plaintiff must first avail himself of the administrative remedy set up by the Federal Act, because, as we have shown, there is no administrative remedy by which the plaintiff can be allowed damages for the wrongs which he is alleged to have suffered.

With no authoritative holding from the Supreme Court of the United States on the matter now before us, it is our view that the court was in error in overruling the demurrer to the plea to the jurisdiction of the state court. We think the demurrer should have been sustained.

It is, accordingly, our conclusion that the court was in error and the judgment of the lower court is accordingly reversed and the cause is remanded.

Reversed and remanded.

All the Justices concur.

APPENDIX D**Part A****PERTINENT PORTIONS OF RECORD****AMENDED COMPLAINT—Filed December 15, 1952**

(R. 43)

Comes the plaintiff in the foregoing cause and amends his complaint by striking the following defendants, namely, Local 68 of International Union United Automobile, Aircraft, and Agricultural Implement Workers of America, C.I.O., an unincorporated organization; Congress of Industrial Organizations, an unincorporated organization; United Textile Workers of America, A.F.L., an unincorporated organization; Local 88 of United Textile Workers of America, A.F.L., an unincorporated organization; American Federation of Labor, an unincorporated organization; and Tommy Wilson, and amends Counts One and Two of the complaint so that the same will read as follows, respectively:

Count One. The plaintiff claims of the defendants the sum of Fifty Thousand (\$50,000.00) Dollars as damages for that on and prior to July 18, 1951, the plaintiff was an employee of Calmet and Hecla Consolidated Copper Company (Wolverine Tube Division) engaged in his said employment at the plant of his said employer in Decatur, Alabama, and customarily went to and from said plant in pursuance of his employment on and over a public street in Decatur, Morgan County, Alabama, known as Railroad Avenue, which said street was the only means of ingress

to and egress from said plant. At the time hereinabove and hereinafter mentioned the defendant, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C.I.O., was the bargaining agent for certain of the employees of plaintiff's said employer, and called a strike against said employer on, to-wit, July 17, 1951, to commence on July 18, 1951. The defendants, in order to make said strike effective, and in order to prevent plaintiff and various other employees of plaintiff's employer, who desired to continue working for their said employer notwithstanding said strike, from entering their employer's place of business, established and maintained from, to-wit, July 18, 1951 to August 22, 1951, a picket line along and in said public street at a point thereon in close proximity to said plant, consisting of great numbers of persons, some of whom were standing along said street and some of whom were walking in a close and compact circle across the entire traveled portion of said street, and said pickets by force of numbers, threats of bodily harm to plaintiff and damage to his property, and by force and violence consisting of taking hold of the automobile in which plaintiff was riding and thereby stopping it, and consisting of some of said pickets standing or walking in front of said automobile, blocked said public street and made passage to said plant over the same impossible for plaintiff and for others similarly situated, and defendants thereby wilfully and maliciously prevented plaintiff from going to and from said plant and from engaging in his said employment, and caused plaintiff to lose much time from his work, to-wit, from July 18, 1951 to August 22, 1951, and to lose earnings from his employment at said plant which he would have received had he not been prevented as aforesaid from going to and from said plant, and caused plaintiff to suffer much mental anguish, all to

plaintiff's damage as aforesaid, and plaintiff in addition to his claim for compensatory damages, claims of the defendants such punitive and exemplary damages as are commensurate with their malicious and reprehensible conduct as aforesaid and as may seem appropriate to the jury trying this cause to punish defendants for such wrongful conduct and to deter defendants and others from committing similar wrongs in the future.

Count Two. Plaintiff claims of the defendants Five Thousand (\$50,000.00) Dollars as damages for that heretofore on, to-wit, the 18th day of July, 1951, plaintiff was employed by Calumet and Hecla Consolidated Copper Company (Wolverine Tube Division) at its plant in Decatur Alabama. The only means of ingress and egress to and from said plant at said time was an entrance from a public street in Decatur, Alabama, known as Railroad Avenue in said City. On, to-wit, the date aforesaid, the defendant unlawfully conspired, confederated, and agreed together and with other persons who are not made parties to this suit, to prevent the plaintiff and other employees at said plant from entering the same and performing their duties as such employees, and in furtherance of said conspiracy the defendant, International Union, United Automobile Aircraft and Agricultural Implement Workers of America C.I.O., an unincorporated organization, stationed or caused the individual defendants in this case and sundry other persons to be stationed at, around and near the entrance to said plant on Railroad Avenue, the individual defendant and said other persons being hereinafter referred to as pickets, and some of said pickets were standing along said street and some of them were walking in a close and compact circle across the entire traveled portion of said street and by force of numbers and threats of bodily harm to

plaintiff and damage to his property, and by force and violence consisting of some of said pickets taking hold of the automobile in which plaintiff was riding and thereby stopping it, and by some of said pickets standing or walking in front of said automobile, the defendants blocked said Railroad Avenue and the entrance to said plant from Railroad Avenue, and thereby wrongfully and maliciously prevented the plaintiff from entering his place of employment at said plant for a long period of time, to-wit, one month, and as a proximate consequence plaintiff lost time from his work and lost earnings from his employment at said plant which he would have received had he not been prevented as aforesaid from entering said plant, and plaintiff claims punitive and exemplary damages to punish defendants for their wrongful conduct and to set an example to deter similar conduct in the future.

Horace C. Wilkinson
Julian Harris
Norman T. Harris

Part B
AMENDMENT TO COMPLAINT

Filed June 4, 1953
(R. 51)

Comes plaintiff and amends his complaint as last amended as follows:

Plaintiff amends Count One of his complaint by striking the words and figures "August 22" where they first occur therein and by inserting in lieu thereof the word and figures "September 24."

Plaintiff further amends Count One by inserting words "at various and sundry intervals during period" immediately following the words "and some whom were walking".

Plaintiff further amends Count One by inserting words "on or about July 18, 1951" immediately follow the words "and said pickets" and immediately before words "by force of numbers".

Plaintiff amends Count Two by inserting the words "plaintiff suffered much mental pain and anguish and humiliated and embarrassed" immediately preceding words "and plaintiff claims punitive and exemplary damages."

Horace C. Wilkinson,
Julian Harris,
Norman W. Harris,
Attorneys for Plaintiff

Part C PLEA TO THE JURISDICTION

Filed August 15, 1952; Refiled December 15, 1952,
May 25, 1953, June 4, 1953 and June 10, 1953

(R. 9)

PLEA TO THE JURISDICTION

Come now the defendants, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C.I.O., an unincorporated organization; United Textile Workers of America, A.F.L., an unincorporated organization; Local 88, United Textile Workers of America, A.F.L., an unincorporated organization; Michael Volk; Tommy Wilson; Howard Hovis; Felton Dyer and Ralph Webster, named defendants in the above-styl

action, and they each individually and collectively file this their plea to the jurisdiction in said cause and to each and every count thereof separately and severally, and for grounds thereof show the following, separately and severally:

I

The Calumet and Hecla Consolidated Copper Company (Wolverine Tube Division) named as employer in said cause, at the times referred to in said complaint was an industry which affected interstate commerce within the meaning of the National Labor Relations Act, as amended by the Labor Management Relations Act of 1947 (29 U. S. C. A. Sec. 141, et seq.).

II

International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C.I.O. (U.A.W.-C.I.O.), at all times referred to in said complaint was a labor organization within the meaning of said Act and was the collective bargaining agent for certain employees of said employer.

III

During the entire period of time referred to in said complaint said employees represented by U.A.W.-C.I.O. were engaged in a strike and maintained a picket line on Railroad Avenue at the entrance to said employer's premises for the purpose of their mutual aid and protection as was their right and privilege under the provisions of Section 7 of the aforementioned Act. The activity of said employees represented by U.A.W.-C.I.O. and of alleged supporters of said employees in maintaining said picket line, is made the sole and entire foundation of plaintiff's complaint for damages.

IV

This Court is without jurisdiction over the subject matter of said complaint.

V

The Congress of the United States in the exercise of its power over interstate commerce by the provisions of said Act has preempted and exclusively occupied the field of regulation of labor relations in industries affecting interstate commerce, to the contravention and prohibition of the exercise of any jurisdiction in said field by this Court.

VI

The Congress of the United States, in the exercise of its power over interstate commerce, by the provisions of said Act has provided for the complete administration and enforcement of the rights and duties created and defined by said Act and has created an exclusive forum, the National Labor Relations Board, for the administration and enforcement of said rights and duties; and the Congress has defined therein all other rights of action for the violation protection and regulation of the rights and duties created, defined and regulated by said Act, not within the exclusive jurisdiction of said forum, setting forth therein and defining said rights of action, setting forth the parties who have the right to enforce said rights of action and setting forth the courts in which said rights of action may be adjudicated in the case of each such right of action so defined and set forth.

VII

The subject matter alleged in the instant case, if true, is regulated by Section 8(b)(1) of said Act, the jurisdiction

tion for the regulation and enforcement of which is granted exclusively to the National Labor Relations Board, together with authority to take such remedial action and grant such relief as said Board shall deem appropriate for the violation of said Section, to the exclusion of the exercise of any jurisdiction whatsoever over the subject matter of said complaint by this Court.

VIII

This Court is without jurisdiction to grant the relief prayed for in said complaint.

IX

For this Court to entertain said complaint and to grant the relief therein prayed for, would be in violation of Article 1, Section 8, paragraph 3 of the Constitution of the United States, for the reason that said Constitutional provision grants to the Congress of the United States exclusive jurisdiction to regulate commerce between the several states, and Congress having undertaken to regulate said commerce by the aforementioned Act, any action by this Court upon the subject matter therein regulated would be in derogation of the authority granted to, and exercised by, Congress under said Constitutional provision.

Wherefore, the above-named defendants show that this Honorable Court has no jurisdiction of the subject matter, and of the cause of action, made the basis of said complaint and that this Court ought not to take further jurisdiction of said cause and complaint; and they pray that said cause be forever abated and dismissed.

Respectfully submitted,

Adair & Goldthwaite,

203 Connally Building Atlanta 3,
Ga.

Sherman Powell,
Decatur, Ala.

AFFIDAVIT

**State of Georgia
Fulton County**

Personally before me, an officer authorized to administer oaths in and for said State and County, appeared M. E. Duncan who after first being duly sworn, deposes and says that he is Assistant Regional Director of Region 8 of the United Automobile, Aircraft and Agricultural Implement Workers of America, C.I.O. (U.A.W.-C.I.O.) and is an agent and representative thereof, which organization is a defendant in the above-styled cause; and he further says on oath that the facts alleged in the above and foregoing plea are known to him to be true and correct.

M. E. Duncan

Sworn to and subscribed before me this 8th day of August, 1952.

Mrs. S. A. Cleves, Jr.,
Notary Public, Fulton County, Georgia.

Part D

DEMURRER TO PLEA

**Filed December 15, 1952; Refiled May 25, 1953
June 4, 1953 and June 10, 1953**

(R. 45)

Comes the plaintiff in the above styled cause and demurs to the plea designated as "Plea To The Jurisdiction" filed by the defendants, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C.I.O., an unincorporated organization, Michael Volk, Howard Hovis, Felton Dyer and Ralph Webster, separately and severally, and assigns the following grounds of demurrer, separately and severally, that is to say:

1. The plea does not set forth any facts which deprive the Court of jurisdiction to entertain and adjudicate the cause of action set forth in the complaint.
2. Neither at the time of the occurrence of the acts of the defendants made the basis of the complaint in this cause, nor at the time of the filing of this suit, did the National Labor Relations Board have any jurisdiction at the instance of the plaintiff or anyone in his behalf to award plaintiff relief on account of the wrongful acts of the defendants alleged in the complaint, or to redress the wrongful conduct committed by the defendants.
3. Neither the National Labor Relations Act nor the Labor Management Relations Act of 1947 deprive the State of Alabama of jurisdiction through its courts to redress wrongs sustained by any person as the result of a labor dispute, nor to award a citizen damages sus-

tained by him by reason of the wrongful conduct of employees of an employer governed by said Acts.

4. The exercise of this Court of its jurisdiction to render judgment awarding damages to the plaintiff and against the defendants for the wrongful conduct averred in the complaint does not in any manner impair, dilute, qualify, or in any respect subtract from any of the rights guaranteed and protected by the National Labor Relations Act and the Labor Management Relations Act of 1947.

5. Neither the National Labor Relations Act nor the Labor Management Relations Act of 1947 conferred upon the defendants the right to commit the wrongs alleged in the complaint, nor deprive this Court of jurisdiction to redress said wrongs at the suit of the plaintiff.

6. Wrongful conduct such as mass picketing, threats, force and violence, as alleged in the complaint in this cause, constitute the basis for a common law tort action, and the National Labor Relations Act and the Labor Management Relations Act of 1947 do not deprive the State of Alabama of authority to exercise its police power through its courts to adjudge and award damages in favor of the plaintiff against the defendants for such wrongful conduct.

7. The wrongful conduct of the defendants alleged in the complaint, such as mass picketing; threats, force and violence, gave rise to two remedies, one before the National Labor Relations Board to prohibit the same, and one before the courts of the state in which said acts were committed to award damages at the suit of any person injured thereby, and the remedy before the National Labor Relations Board was in addition to the right on the part of the injured person to maintain suit in a state court of competent jurisdiction, and there is no inconsistency between said remedies.

8. The maintenance of this suit does not in any way interfere with and is not inconsistent with the exercise of jurisdiction by the National Labor Relations Board conferred upon it by the National Labor Relations Act as amended by the Labor Management Relations Act of 1947.

9. No jurisdiction has been conferred by law upon the National Labor Relations Board to award compensatory damages sustained by plaintiff on account of the matter and things alleged in the complaint.

10. It does not appear that the labor organization which is a defendant in this case, or any other defendants, is responsible for unlawful discrimination against an employee under such circumstances as would confer jurisdiction upon the National Labor Relations Board under the provisions of Section 10 (c) of the Labor Management Relations Act of 1947 to order his reinstatement with back pay.

Horace C. Wilkinson,
Norman W. Harris,
Attorneys for Plaintiff.

Part E
JUDGMENT OF TRIAL COURT
(R. 53-4)

May 25, 1953. Upon the orders of the Court that the pleadings be settled and the issues be formed, comes the parties by their attorneys into open court, and, in keeping with the ruling and judgment of the Supreme Court of Alabama on appeal in this cause, it is considered, ordered and adjudged that the nonsuit taken by plaintiff on December 29, 1952 be and the same is hereby set aside, rescinded and annulled, and that this cause be and the same is hereby restored to the trial docket of this Court for further proceedings. Thereupon, defendants, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C.I.O., an unincorporated organization, Michael Volk, Howard Hovis, Felton Dye and Ralph Webster re-file their plea to the jurisdiction of the Court, originally filed August 15, 1952, and re-filed December 15, 1952, and plaintiff re-files his demurrer to said plea, and upon consideration of the same it is ordered and adjudged that the plaintiff's demurrer to said plea to the jurisdiction be and the same is hereby sustained.

Thereupon, said defendants refile their demurrer to the complaint as amended, the said demurrer having been originally filed August 15, 1952, and upon consideration of the same it is ordered and adjudged that said demurrer to the complaint be and the same is hereby overruled. Thereupon, the defendants plead the general issue in short by consent, with leave to give in evidence any matter that would be a defense if well-pleaded, with leave to plaintiff to reply in like manner.

June 4, 1953. This cause having come on for trial on June 3, 1953, and a jury, consisting of G. H. Grisham and eleven others, having been duly impaneled, and the parties having proceeded with the introduction of evidence, plaintiff asks leave to amend his complaint by amending Counts One and Two and by adding Count Three, and the defendants having objected to the filing of Count Three, and the Court having considered said objection, it is ordered and adjudged by the Court that the same be and is hereby overruled, to which action of the Court the defendants reserve an exception.

Thereupon, the defendants moved to strike Count Three of the complaint, and said motion being considered by the Court it is ordered and adjudged by the Court that the same be and is hereby overruled, to said action of the Court in overruling said motion the defendants reserve an exception. By agreement of the parties hereto Count Three of the Complaint is withdrawn, and the defendants to the complaint as last amended re-file their said plea to the jurisdiction of the Court, and the plaintiff re-files his demurrer thereto, and said demurrer being duly considered by the Court it is ordered and adjudged by the Court that the same be and is hereby sustained. Thereupon, the defendants re-file their demurrer to the complaint as amended, and the Court having considered said demurrer it is ordered and adjudged by the Court that the same be and is hereby overruled. Thereupon, the defendants plead the general issue in short by consent, with leave to give in evidence any matter that would be a defense if well-pleaded, with a like leave on the part of the plaintiff to reply in like manner.

June 10, 1953. Upon the conclusion of the evidence the plaintiff amends his complaint by striking therefrom as defendants Howard Hovis, Felton Dyer, and Ralph Web-

ster, and the defendants, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C.I.O., an unincorporated organization, and Michael Volk re-file their plea to the jurisdiction of the Court. Whereupon, plaintiff re-files his demurrer to said plea, and said demurrer being duly considered by the Court it is ordered and adjudged by the Court that the same be and is hereby sustained. Thereupon, the said defendants re-file their demurrer to the complaint as amended, and the same being duly considered by the Court it is ordered and adjudged that said demurrer be and the same is hereby overruled. Thereupon, the defendants plead the general issue in short by consent, with leave to give in evidence any matter that would be a defense if well-pleaded, with a like leave on the part of the plaintiff to reply in answer thereto.

June 11, 1953. The jury empaneled to try the issues in this cause having been duly sworn according to law, and having heard the evidence introduced and the charge of the Court do upon their oaths say and do return into open court in words and figures as follows:

"We the Jury find for the Plaintiff and assess the damage at \$10,000.00.

G. H. Grisham
Foreman."

It is therefore in accordance with the verdict of the jury considered, ordered and adjudged by the Court that the plaintiff have and recover of the defendants, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C.I.O., an unincorporated organization, and Michael Volk, the said sum of Ten Thousand (\$10,000.00) Dollars, together with the costs of this cause, for the recovery of which let execution issue.

Part F**ASSIGNMENTS OF ERROR IN THE SUPREME COURT
OF ALABAMA PERTINENT TO REVIEW BY
THE SUPREME COURT OF THE
UNITED STATES****(R. 653, 654, 662, 677)****IN THE SUPREME COURT OF ALABAMA****No.****JUDICIAL CIRCUIT**

Appealed from the Circuit Court of Morgan County,
Alabama

International Union, United Auto-
mobile, Aircraft and Agricul-
tural Implement Workers of
America (UAW-CIO), and Mi-
chael Volk,

Appellants,
Defendants Below,

v.

Paul S. Russell,

Appellee,
Plaintiff Below.

No. 6149

Come now the Appellants, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO), and Michael Volk, separately and severally, and assign as error, separately and severally, the rulings, orders, judgments and decrees, separately and severally, of the Supreme Court of Alabama and of the Circuit Court, as follows:

1.

The Supreme Court of Alabama erred in its opinion judgment and decision of March 13, 1953, in the case of Paul S. Russell v. International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO), et al., 8th Division 697, the previous appeal by the plaintiff in the within cause, deciding that the trial court erred in overruling the plaintiff's demurrer to the defendant's plea to the jurisdiction of the State Court, and reversing the judgment of the lower court and remanding the cause. (Opinion of the Court page 16, 8th Div. 697).

2.

The Supreme Court of Alabama erred in its decision of April 2, 1953 in the case of Paul S. Russell v. International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO), et al., 8th Div. 697, the previous appeal of the plaintiff in the within cause, overruling and denying the defendant's application for a rehearing (Record, 8th Div. 697), and erred in failing to grant said rehearing, in failing to vacate its opinion and judgment of March 13, 1953, and in failing to affirm the judgment and decision of the trial court.

* * * * *

4.

The Circuit Court erred in its judgment and decision (R., pp. 53, 54) sustaining plaintiff's demurrer (R., pp. 45, 46, 47), refiled (R., pp. 53, 54) to defendants' plea to the jurisdiction (R., pp. 9, 10, 11), based upon the lack of jurisdiction in the state court, refiled (R., pp. 53, 54), to plaintiff's complaint and each count thereof, separate

and severally, as amended (R., pp. 43, 44, 45), and refiled (R., p. 53, 54) to plaintiff's complaint and each count thereof separately and severally, as finally amended (R., pp. 51, 53, 54).

41.

The Circuit Court erred in giving to the jury at the request of the plaintiff, in writing, the following charge:

" '9. The court charges the jury that picketing is lawful when it is for the purpose of observation, or for the purpose of peaceful persuasion, or for the purpose of apprising others of a dispute between employer and employees, but that picketing is unlawful if carried on with intimidation, threats, coercion, force or violence. Picketing is unlawful if such a large number of pickets is utilized as to obstruct a public street and block the entrance to a plant from said street, or if the pickets use threats or abusive language towards others to such an extent as to instill fear of harm or injury in the mind of a reasonable man. The Court further charges the jury that if the defendants in this case stationed or caused pickets to be stationed on a public street, as alleged in the complaint, for the purpose of preventing plaintiff and others from entering into their place of employment by means of intimidation, threats, coercion, force or violence, and if you are reasonably satisfied from the evidence that the number of pickets and their conduct as alleged in the complaint was such as to prevent the plaintiff by such unlawful means from entering his place of employment, and as a proximate consequence thereof the plaintiff was denied access to his place of employment for a long period of time, you should return a verdict in favor of plaintiff.' Given, S. A. Lynne, Judge." (R. 634.)

77.

The Circuit Court erred in its judgment (R. p. 79) overruling Ground 2 of defendants' motion for a new trial (R., p. 55), which is as follows:

"For that the verdict of the jury is not sustained by any evidence in the case, and is without evidence to support it."

78.

The Circuit Court erred in its judgment (R., p. 79) overruling Ground 4 of defendants' motion for a new trial (R., p. 55), which is as follows:

"For that the verdict of the jury is contrary to the great weight of the evidence."

Part G.

MOTION FOR REHEARING—Filed April 5, 1956

(R. 709)

DENIED WITHOUT OPINION—June 21, 1956

(R. 716)

IN THE SUPREME COURT OF ALABAMA

International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO), and Michael Volk,

Appellants,

v.

Paul S. Russell,

Appellee.

8th Division 751

MOTION FOR REHEARING

Come now International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO) and Michael Volk, Appellants in the above styled cause, and move that the Supreme Court of Alabama grant a rehearing in the above styled cause and that the judgment and opinion rendered and entered on the 22nd day of March, 1956 be reversed, revised and vacated, and move that upon said rehearing the Court enter its judgment reversing the final judgment of the Circuit Court of Morgan County entered in said cause.

Appellants further move and pray that the Court recall its certificate of affirmance from the Circuit Court of Morgan County pending consideration and disposition of

the within application for rehearing, and appellants further pray that the within application for rehearing be set down for oral argument before the Court.

As grounds for this motion and application for rehearing appellants show the following:

1.

In reaching its decision and opinion that the Circuit Court of Morgan County had jurisdiction to entertain the cause of action alleged by plaintiff, this Court erred in relying upon the case of *United Construction Workers v. Laburnum Construction Corporation*, 194 Va. 872, 75 S. E. 2d 694, and in ruling that the decision of the United States Supreme Court in the same case (347 U. S. 656), was applicable and controlling; and in reaching said determination as to jurisdiction the Supreme Court further erred in failing to consider and hold controlling the decisions hereinafter listed, which distinguish said *Laburnum* case, and which are controlling authority to the effect that the State Court is without jurisdiction in the within cause:

Weber v. Anheuser-Busch, Inc., 348 U. S. 468 (March 1955);

Born v. Laube, (C. C. A. 9) 213 Fed. 2d 407; Same case on Rehearing, 214 Fed. 2d 349 (Cert. Den. U. S. Supreme Court 1954, 348 U. S. 855);

McNish v. American Brass Co., 139 Conn. 44, 89 Atl. 2d 566;

Mahoney v. Sailors Union of the Pacific, (Washington Supreme Court) 275 Pae. 2d 440;

Sterling v. Local 438 Liberty Association of Steam and Power Pipe Fitters and Helpers Association, Maryland Court of Appeals, 113 Atl. 2d 389;

Gonzales v. International Association of Machinists, (California District Court of Appeals, Feb. 16, 1956), 37 L. R. R. M. 2719;
Plankinton Packing Co. v. Wisconsin Board, 338 U. S. 953;
United Automobile Workers v. O'Brien, 339 U. S. 454;
Garner v. Teamsters Union, 346 U. S. 485;
Amalgamated Association of Street, etc. Employees v. Wisconsin Baard, 340 U. S. 383;
In Re Cory Corporation, 84 N. L. R. B. 972;
In Re Sunset Line and Twine Co., 79 N. L. R. B. 1487.

2.

In ruling upon Appellants' assignment of error that the verdict was contrary to the great preponderance or the great weight of the evidence (Joint Assignment 78), the Court failed to follow the established rule in Alabama that upon motion for new trial it is the duty of the trial court to set aside a verdict which is contrary to the great preponderance of the evidence, and that on appeal from a judgment of the trial court on a motion for a new trial it is the province of the Supreme Court to set aside a verdict which is contrary to the great preponderance of the evidence, in that there is not sufficient evidence in the record to authorize a finding that work would have been available for the plaintiff at the premises of his employer even if the alleged improper picketing had not existed.

Barber v. Stephenson, 260 Ala. 151, 69 So. 2d 251.

3.

The Court erred in holding that the trial court did not abuse its discretion in admitting evidence of events transpiring on August 20 and August 22, 1951, separately and

severally, and in holding that such evidence was admissible for the purpose of proving the allegations of Count 2 alleging a conspiracy on the authority of *Barber v. Stephenson*, 260 Ala. 151, 69 So. 2d 251. In particular the items of evidence which were improperly admitted are separately and severally the following:

- (1) Photographs of the picket line on August 22, 1951;
- (2) A moving picture of the picket line on August 22, 1951;
- (3) Testimony concerning a locomotive incident on August 20, 1951.

Further, the Court should have considered and followed the following authorities which hold that the trial court must exercise a sound discretion in admitting evidence which will arouse the sympathies or prejudices of the jury rather than throw any real light upon the issue, which exercise of discretion is subject to review and reversal when abused.

City of Anniston v. Simmons, 31 Ala. App. 536, 20 So. 2d 52 (Cert. Den. 246 Ala. 153, 20 So. 2d 54);

Birmingham Baptist Hospital v. Blackwell, 221 Ala. 225; 128 So. 389;
22 *Corpus Juris*, §1115, p. 914.

4.

In holding that no reversible error was shown in connection with plaintiff's unnumbered explanatory charge (Joint Assignment of Error 42), the Court failed to consider the change of law as to procedure resulting from Acts 1943, p. 423 (Title 7, §827 (1) through §827 (6) of the Alabama Code), and improperly found that the sub-

jeet-matter covered by said charge was fully and correctly covered in the Court's oral charge.

5.

In considering plaintiff's requested Charge #9 (Joint Assignment of Error 41), and in holding that no reversible error was shown in connection with said Charge, the Court erred in holding that the Charge was susceptible of two constructions and failed to consider Appellants' contention that said charge omitted to include an essential element of plaintiff's cause of action, and, therefore, authorized the jury to return a verdict for the plaintiff without a preliminary finding that such essential element was shown by the preponderance of the evidence.

6.

In reaching its determination that the verdict in the within cause cannot be held to be excessive the Court failed to consider (1) the lack of proof that work would have been available for the plaintiff if he had reported for work; (2) the fact that the plaintiff's employer told representatives of the appellant union that it would not need hourly employees to work during the strike; (3) the fact that a representative of the plaintiff's employer came to the picket line on July 18, before the plaintiff came to the picket line, and instructed representatives of the appellants how supervisory employees whom it desired to enter the plant could be identified; (4) the fact that there was no rebuttal in the record to the evidence contained in testimony of several witnesses and in interrogatory answers that the plaintiff's employer did not intend to operate the plant during the strike; (5) the fact that the plaintiff's employer made no effort and showed no desire to operate the plant until after the plaintiff, and others, procured a

sufficient number of signatures (250) to a petition requesting that the plant be reopened; (6) the fact that under these circumstances there was no showing that the appellants had any reason to believe that the plaintiff would be caused to lose employment; (7) the fact that under these circumstances there could be no malicious or wilful intent to disregard the plaintiff's right as to working, or (8) the fact that under these circumstances the damages awarded are entirely disproportionate to any damage the plaintiff may have suffered if he could have worked and to any possible wrong which the appellants may be responsible for.

Wherefore, appellants pray that this application and motion for rehearing be filed and considered; that pending such consideration the certificate of affirmance be recalled from the Circuit Court of Morgan County; that this application and motion be set down for oral argument; that upon reconsideration and rehearing this Court vacate and reverse its opinion and judgment of March 22, 1956, and enter its opinion and judgment reversing the judgment of the Circuit Court of Morgan County.

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REQUEST FOR ORAL ARGUMENT

Appellants respectfully pray that they be granted the privilege of oral argument upon the foregoing motion and application for rehearing.

J. R. Goldthwaite, Jr.,
Attorney for Appellants.

CERTIFICATE OF SERVICE

This will certify that I have this day served copy of the above and foregoing motion and application for rehearing, and copy of the brief in support of said motion upon Norman W. Harris, Attorney for Paul S. Russell; by mailing same, postage prepaid, to his office in the State National Bank Building, Decatur, Alabama.

This the 4 day of April, 1956.

J. R. Goldthwaite, Jr.,
Attorney for Appellants.

IN THE

JOHN T. FEY, Clerk

Supreme Court of the United States

OCTOBER TERM 1956

No. 47 21

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AIRCRAFT AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW-CIO),

An Unincorporated Labor Organization, and

MICHAEL VOLK, An Individual,
Petitioners,

vs.

PAUL S. RUSSELL,
Respondent

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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IN THE

Supreme Court of the United States

OCTOBER TERM 1956

—♦—
No. 427
—♦—

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AIRCRAFT AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW-CIO),

An Unincorporated Labor Organization, and
MICHAEL VOLK, An Individual,
Petitioners,

vs.

PAUL S. RUSSELL,
Respondent

—♦—

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

—♦—
I.

THE FIRST FEDERAL QUESTION—CONGRESSIONAL REGULATION OF RIGHTS PLUS PROVISION OF A SPECIFIC REMEDY TO PROTECT AND REGULATE THESE RIGHTS CONSTITUTE A COMPLETE SCHEME OF REGULATION HAVING ALL THE CRITERIA OF FEDERAL PREEMPTION. NATURE OF THE CONDUCT INVOLVED IS NOT DETERMINATIVE.

This was not a suit for damage to plaintiff's automobile or other property, for damages because of personal injuries or assault and battery, for damages because of

false arrest or imprisonment, or for any other type of damages disassociate from interference with the right to work during a strike. The subject matter adjudicated was the identical subject matter over which the National Labor Relations Board is given jurisdiction and authority to adjudicate by Sections 7 and 8 (b) (1) of the Act—that is, the protection and interrelation of an *employee's* right to work during a strike without interference by a labor organization or its agents and the right of employees to strike and picket.

Respondent contends that the Federal question involved here was adjudicated adversely to Petitioners in *United Construction Workers v. Laburnum Construction Corp.*, 347 U. S. 656.

As was pointed out in the Petition for Certiorari, the National Labor Relations Act, as amended, neither regulates nor protects the *employer* rights adjudicated in the *Laburnum* case, nor does it supply a remedy parallel to that exercised by the state court in that case. Section 7 of the National Relations Act protects the rights of *employees*, not employers. Section 8 (b) (1) (A) of the Act condemns the infringement of these rights and Section 10 of the Act provides an administrative remedy, with ultimate resort to the courts, in event of alleged infringement.

The Act thus protects the rights of employees to work during a strike against impairment by any means, including actual or threatened violence, and provides a remedy for the enforcement of this right.

It does not protect the right of an employer to engage in his business or occupation against similar infringement and provides no remedy to an employer which he may pursue in the event the operation of his business is interfered with in parallel instances.

True, an employer may file a charge that an unfair labor practice has been committed and thereby put in motion the investigative machinery of the Board, but in so doing, a charge of violation of Section 8 (b) (1) (by whomever filed) will put in motion only machinery designed to protect and vindicate the rights of employees. No machinery designed to protect the parallel rights of the employer is provided by the Act.

The decisions of this Court make it abundantly apparent that it is the creation or protection of rights and the provision by Congress of a remedy, or machinery, to enforce the rights thus created or protected, which constitute the criteria for the determination of whether the Congressional regulation is exclusive and that the source or means of interference with these rights is immaterial.¹ *Garner v. Teamster's Union*, 346 U. S. 485, 490.

The existence of actual or threatened force or violence has never been held to be determinative in the solution of the problem of jurisdiction. This case, like the *Garner* case but unlike the *Kohler* case,² does not involve the exercise of emergency powers of the state to maintain law and order, but involves solely (to reiterate the petition for certiorari) the interbalancing of the rights protected by Section 7 of the Act—that is, the right of employees to strike and the right of employees to work in the face

¹ "It is a familiar principle that acts which directly burden or obstruct interstate or foreign commerce, or its free flow, are within the reach of the Congressional power. Acts having that effect are not rendered immune because they grew out of labor disputes. * * * It is the effect upon commerce, not the source of the injury, which is the criterion." *National Labor Relations Board v. Jones and Laughlin Steel Corp.*, 301 U. S. 1, 31.

² *United Automobile, Aircraft, and Agricultural Implement Workers of America v. Wisconsin Employment Relations Board and Kohler Company*, — U. S. —; 76 S. Ct. 794.

of a strike. This function has been committed by Congress to the National Labor Relations Board. The Board has no jurisdiction to award damages in the form of lost profits or for physical injury to property of an *employer*, but it does have the express power to adjudicate the rights of *employees* to strike and to refrain from striking and to provide such relief to employees as it may deem necessary to protect the rights entrusted by Congress to its expert custody. Among the various forms of relief which the Board may formulate is the award of back pay due because of interference with employment. Congress has "prescribed (this) procedure for dealing with the consequences of (this) tortious conduct already committed." *United Construction Workers v. Laburnum Construction Corporation*, 347 U. S. 656, 665. (Words in parenthesis supplied.)

The power of Congress over interstate commerce and matters which affect or burden commerce is plenary and is as broad as the police powers of the states. *National Labor Relations Board v. Jones and Laughlin Steel Corp.*, 301 U. S. 1; *Gibbons v. Ogden*, 9 Wheat. 196.

"The two laws may not be in such absolute opposition to each other, as to render the one incapable of execution, without violating the injunctions of the other; and yet, the will of one legislature may be in direct collision with that of the other. This will is to be discovered, as well by what the legislature has not declared, as by what they have expressed. Congress, for example, has declared, that the punishment for disobedience of the act of Congress, shall be a certain fine; if that provided by the State legislature for the same offense be a similar fine, with the addition of imprisonment or death, the latter law would not prevent the former from being carried into execution; and may be said, therefore, not to be repugnant to it. But surely

the will of Congress is, nevertheless, thwarted and opposed.

* * * * Congress has exercised the powers conferred on that body by the Constitution, as fully as was thought right, and has thus excluded the power of legislation by the States on these subjects, except so far as it has been permitted by Congress; although it should be conceded, that important provisions have been omitted, or that others which have been made might have been more extended, or more wisely devised."

Houston v. Moore, 5 Wheat. 1, 21-23, Justice Washington speaking for the Court.

This Court has often held that when Congress undertakes to legislate on a subject, it must be presumed that the Congressional regulations go as far as Congress "thought right;" and State regulation or action which goes further than the Congressional regulation (by imposing staggering punitive damages, for example), even though it be not incompatible with the Congressional regulation in its intent and purpose, is nevertheless necessarily inconsistent with and contradictory of the judgment of Congress as to how far the regulation should go. *Amalgamated Association of Street, etc., Employees v. Wisconsin Employment Relations Board*, 340 U. S. 383.³

³ "When Congress has taken the particular subject matter in hand, coincidence is as ineffective as opposition, and a State law is not to be declared a help because it attempts to go further than Congress has seen fit to go." *Charleston and Carolina Railroad v. Varnville Company*, 237 U. S. 597, 604.

"Congress must be deemed to have determined that the rule laid down and the means provided by the Cormack and Cummins amendments to the Interstate Commerce Act to enforce it are sufficient and that no other regulation is necessary. Its power to regulate such commerce. * * *

This Court has also in many and varied instances and applications held that rights of action accruing to individuals under the common law of a state are superseded by acts of Congress regulating interstate commerce. E. g., *Western Union Telegraph Company v. Speight*, 254 U. S. 17; *Texas and Pacific Railway Company v. Abilene Cotton Oil Company*, 204 U. S. 426:

"* * * it is for Congress to determine how the rights which it creates shall be enforced. * * * In such a case the specification of one remedy normally excludes another."

Switchmen's Union v. National Mediation Board,
320 U. S. 297, 301.

Where Congress has, as here, provided an administrative remedy, such remedy is exclusive and must be exhausted before any resort to the courts, state or federal, may be had. *Aircraft Corporation v. Hirsch*, 331 U. S. 752, 767, 768, and cases cited.

(Continued from preceding page)

is supreme; and as that power has been exerted, state laws have no application. They cannot be applied in coincidence with, as complementary to, or as in opposition to, Federal enactments which disclose the intention of Congress to enter a field of regulation that is within its jurisdiction." *Missouri Pacific Railroad Company v. Porter*, 273 U. S. 341, 345.

"* * * where the United States exercises its power of legislation so as to conflict with a regulation of the State, either specifically or by implication, the State legislation becomes inoperative and the Federal legislation is exclusive in its application." *Cloverleaf Butter Company v. Patterson*, 315 U. S. 148, 156.

II.

SECOND FEDERAL QUESTION

Since this was not a case of a common law tort (such as for assault) as to which any damages were recoverable without a showing of an actual loss of work, it was essential to the plaintiff's case that he prove, as one of the elements of his evidence, that work would have been available to him had he entered his place of employment. Charge 9, given by the trial court at the request of the plaintiff and approved by the Supreme Court of Alabama, omits from its hypothesis the instruction that the jury must find that work was available before a verdict would be authorized for the plaintiff. The charge thus authorizes a verdict to be rendered against the defendants on the hypothesis that the bare exercise of the federally protected right to strike may be subjected to a penalty of damages. Such is erroneous and the jury would have been authorized to return a verdict under this charge alone, without regard to the other charges given by the Court. The Supreme Court of Alabama did not place its opinion as to this charge upon the basis that the giving thereof was a harmless error in the light of other charges, but, to the contrary, placed its stamp of approval on the charge which by its terms deprived the defendants of a Federal right. (R. 705; Appendix B, p. 24a.)

III.

**THIRD FEDERAL QUESTION AND THE INSUFFICIENCY
OF THE EVIDENCE**

The Respondent points out on pages 10 and 11 of the Brief in Opposition to the Petition for Writ of Certiorari that the trial court in the conduct of the trial charged the jury upon the Federal right of the defendants to strike and to picket. These are the rights which Congress has committed to the jurisdiction of the National Labor Relations Board together with the right of the plaintiff to refrain from striking and to work during a strike. The preamble to the Labor Management Relations Act of 1947 (29 U. S. C., Sect. 141 (b)) states that the interbalancing of these rights is the very purpose of the existence of the National Labor Relations Board. The very necessity for the trial court to charge the jury upon their duty to protect these rights of defendants points up with abundant clarity the conflict in jurisdiction which exists when these rights are committed to the protection of the thousands of trial courts throughout the nation rather than retained exclusively in the breast of the Federal agency which has been established for their protection and regulation. Uniformity in the effectuation of the policy and will of Congress cannot be attained before the diversified view points of trial courts and juries but can only be attained before a centralized agency. *Garner v. Teamster's Union*, 346 U. S. 485; *Amazon Cotton Mills Company v. Textile Workers Union*, 167 F. 2d 183.

The giving of lip service to these Federal rights does not guarantee their existence under the rules of the Agency to which they were committed by Congress. Especially is this true where there was no evidence to show that any actual damages were sustained by the plaintiff in the form of lost wages.

Respondent attempts to divert the attention of this Court away from the lack of evidence in this regard by arguing, just as it did in the Supreme Court of Alabama, that the evidence was in conflict on the question of an "agreement" on the part of the company not to operate its plant during the strike. It is true that the evidence was in conflict as to whether or not an explicit agreement had been made. By this argument the attention of the Supreme Court of Alabama was diverted away from the fact that there was no evidence to show that any work would have been offered to plaintiff had he entered the plant during the strike, and away from the mass of facts which show clearly that, explicit "agreement" or no, the company had no desire to, and made no attempt to, operate the plant after the time its agents saw the picket line being established on the morning the strike began. As soon as the picket line was seen and before it was time for the first shift of employees to report to work, the company began its preparations to close.

Respondent, on pages 12 and 13 of his brief, indulges in criticism of the brief mention which is made of these facts in the Petition for Certiorari. Fifty-One (51) per cent of the employees in the production division of the plant alone voted in April for the Union. These were in addition to the almost unanimous vote of the maintenance division of the plant a year earlier (R. 184). The evidence is uncontradicted that in July (three full months after the last election) over 400 of the employees voted to go on strike and that this number was such that, in the knowledge of the plaintiff, the company could not have operated the plant with the remainder.

Criticism was also indulged as to the comments of Petitioners upon the testimony of Howard Babis, company foreman, and it is stated that no testimony found in the

record supports these comments. The testimony is set out in the footnote below.*

Reference is made on page 14 of the Brief in Opposition to a practice of the company to notify all employees when the plant was to be shut down, by placing notice on bulletin boards. This practice was in effect when the plant closed down for lack of work, for vacations, or for repairs. Its admissibility for the purpose of showing what might be the practice in the case of a strike was objected to by the defendants. Mr. Oakes testified that the company was not advised of the exact time when the strike would begin (R. 601). A notice could hardly be placed on the bulletin board to advise employees of the beginning of the strike when the company did not know the date or the time of the impending strike. As mentioned previously, as soon as the company was advised of the date and time by seeing the picket line assembling it began its preparation to close the plant immediately.

All employees were requested by the union to report at the picket line on the morning that the strike began in order that picket schedules might be established (R. 544). It was the employees who were going on strike, not the International Union. Their acute personal interest

* "Q. Did Oakes or other top officials of the company advise you of the agreement that the company made with the union on July 17 that the plant would be closed for the duration of the strike to all hourly paid employees?"

"A. That the plant would be closed—the terminology I am not sure" (R. 307, 308).

* * * *

"Q. I will ask you the question again: Were you advised of an agreement between the union committee and the company that the company would remain closed for the duration of the strike to all hourly paid employees?"

"A. I was told there would not be any work because of a discussion between the company and the union" (R. 308).

and their morale were sufficient causes for them to be present at the inception of the strike without regard to any other factors whatsoever.

There was no actual violence in this strike until after five weeks; when the plaintiff and others induced the company to re-open. As a part of its preparations to re-open the company attempted to bring in copper and, regrettably, the emotions of the employees, who saw five weeks of privation going to waste, prevailed over reason at a time when no representative or agent of the Petitioners was present. Yet Respondent sued for wages allegedly lost *during* the five week period preceding the opening of the plant.

No evidence shows any request of the company for injunction or for protection by law enforcement officials until around August 20, 1951, when, in response to plaintiff's back-to-work petition, it sought to break the strike and the State Highway Patrol was procured to be present for this purpose.

IV. **CONCLUSION**

Congress has entrusted the important function of weighing in balance the rights involved in this case to the dispassionate investigative and remedial powers of the National Labor Relations Board. The adroitness of counsel for the Respondent in the art of engendering passion in the minds of a jury is illustrated by the Conclusion of their Brief in Opposition. The will of Congress that the rights of employees should be dispassionately administered by an expert tribunal cannot help but be thwarted when

such adroitness is brought to bear upon jurors who have no understanding of these rights or of the policies which Congress thought essential to the national welfare.

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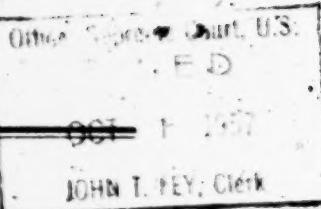
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OCTOBER TERM, 1956

No. [REDACTED] 21

INTERNATIONAL UNION, UNITED AUTOMOBILE,
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and MICHAEL VOLK, An Individual,

Petitioners,

vs.

PAUL S. RUSSELL,

Respondent

ON WRIT OF CERTIORARI TO THE SUPREME COURT
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BRIEF FOR PETITIONERS

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1956

◆◆◆
No. 427
◆◆◆

**INTERNATIONAL UNION, UNITED AUTOMOBILE,
AIRCRAFT AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW-CIO),**

An Unincorporated Labor Organization,
and **MICHAEL VOLK, An Individual,**
Petitioners,

vs.

PAUL S. RUSSELL,
Respondent

◆◆◆
**ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF ALABAMA**
◆◆◆

BRIEF FOR PETITIONERS

◆◆◆
OPINIONS BELOW

The opinion of the Supreme Court of Alabama (R. 647)¹ is reported at 264 Ala. 456, in the official reports and at 88 So. 2d 175 in the unofficial reports. An earlier opinion of the Supreme Court of Alabama in the instant case in an appeal taken by the Respondent (R. 669) is reported at 253 Ala. 615, 64 So. 2d 384.

¹ References to the printed record in this Court are designated by "R".

JURISDICTION

The opinion and judgment (R. 663) of the Supreme Court of Alabama were entered on March 22, 1956 and timely motion for rehearing was denied by that Court by entry dated June 21, 1956 (R. 668).

The petition for a Writ of Certiorari was filed on September 15, 1956, and was granted November 19, 1956. The jurisdiction of this Court rests on 28 U. S. C. §1257 (3), [since rights, privileges and immunities are specially set up and claimed under the Constitution and statutes of the United States and are believed to have been improperly denied by the highest court of the State of Alabama].

QUESTIONS PRESENTED

I.

Whether the State of Alabama through the device of a common law tort action filed by an *employee* and the imposition of severe punitive damages, has assumed control of and imposed its regulations upon, the right to engage in concerted activities and the right to refrain from such activities guaranteed by Section 7 of the National Labor Relations Act, as amended, in derogation of the holding of this Court in *Amalgamated Association of Street, etc., Employees v. Wisconsin Employment Relations Board*, 340 U. S. 383, 390, note 12, and in other decisions, that the National Labor Relations Board was given exclusive jurisdiction to enforce such rights of *employees* and that the Federal Act had occupied this field to the exclusion of state regulation.

II.

Whether the court of the State of Alabama has jurisdiction to grant redress in damages, including punitive damages, to an *employee* of an industry affecting interstate commerce for alleged interference with his right to work during a lawful strike when such right is guaranteed and protected by Section 7 of the National Labor Relations Act, as amended, and when Congress in Sections 8 (b) (1) and 10 of that Act "prescribed procedure for dealing with the consequences of (such) tortious conduct already committed."²

III.

Where the State Court by its charges submitted to the jury the question of whether an alleged loss of wages was proximately caused to plaintiff by excessive picketing or by a lawful privileged and Federally protected strike, and where the evidence overwhelmingly supports the contention of the Petitioners that such loss of wages was the proximate result of the strike and was, therefore *damnum absque injuria*, under Federal law, does not the State of Alabama thereby submit to a jury for decision questions which are within the sole and exclusive province of the National Labor Relations Board to decide, and were not the Petitioners thereby deprived of valuable Federally guaranteed rights?

² *United Construction Workers v. Laburnum Construction Corp.*, 347 U. S. 656, 665.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED:

Constitution of the United States:

Article I, Section 8, Clauses 3 and 18 (Commerce Powers)

Article VI, Clause 2 (Federal Supremacy)

Labor Management Relations Act, 1947:

(June 23, 1947, Ch. 120, Sec. 1, *et seq.* 61 Stat. 134, *et seq.*; 29 U. S. C. 141, *et seq.*)

National Labor Relations Act, as amended by *Labor Management Relations Act, 1947* (June 23, 1947, Ch. 120, Title I, Sec. 101; 61 Stat. 136, *et seq.*; 29 U. S. C. 151, *et seq.*):

61 Stat. 136, 29 U. S. C. 141 (b) [L. M. R. A., Sec. 1 (b)]

61 Stat. 140, 29 U. S. C. 157 [N. L. R. A., Sec. 7]

61 Stat. 140, 29 U. S. C. 158 (b) (1) and (2) [N. L. R. A., Sec. 8 (b) (1) and (2)]

61 Stat. 146, 29 U. S. C. 160 (a), (c) and (j) [N. L. R. A., Sec. 10 (a) (c) and (j)]

61 Stat. 151, 29 U. S. C. 163 [N. L. R. A. Sec. 13]

61 Stat. 156, 29 U. S. C. 185 (a) [L. M. R. A., Sec. 301 (a)]

61 Stat. 158, 29 U. S. C. 187 (b) [L. R. M. A., Sec. 303 (b)]

Texts are set out in Appendix "A", pp. 1a-6a, *infra*.

STATEMENT OF THE CASE and Presentation of the Federal Questions

By order of the National Labor Relations Board, dated November 21, 1949 (R. 133), and by order of the Director of the Tenth Region of the National Labor Relations Board, dated May 4, 1951 (R. 135), the Union Petitioner was certified as the exclusive representative of the employees of the Calumet and Hecla Consolidated Copper Company (Wolverine Tube Division) in Decatur, Alabama, for purposes of collective bargaining. All production and maintenance employees of the Decatur plant comprised the bargaining units thus certified (R. 137, 139).

A. Preliminary Proceedings

In July, 1952 the Respondent, Paul S. Russell (R. 1) and twenty-nine other employees of Calumet and Hecla (R. 76-81) filed identical damage suits against Petitioners and other organizations and individuals, each complaint claiming \$50,000.00 damages for alleged interference, for a five week period, with the right of such persons to work during a strike at the Decatur, Alabama plant of Calumet and Hecla.³

³ These actions were solicited to be filed by the Respondent (R. 75-81). Respondent received a verdict in the sum of \$10,000.00 in this case. Upon evidence virtually identical to that in this case, other verdicts have been returned in the amounts of \$8,000.00 (*McLemore v. International Union and Michael Volk*, #6150 in the Circuit Court of Morgan County, Alabama, new trial granted for improper argument of plaintiff's counsel); \$10,000.00 (*James W. Thompson v. International Union and Michael Volk*, #6151 in the Circuit Court of Morgan County, appeal pending in the Supreme Court of Alabama); and \$18,450.00 (*N. A. Palmer v. International Union and Michael Volk*, #6152 in the Circuit Court of Morgan County, appeal pending in Supreme Court of Alabama). Of six trials, four have resulted in verdicts as shown and two have been declared mistrials because the jury were unable to agree upon a verdict.

(Continued on next page)

The defendants in the Russell action filed their Plea to the Jurisdiction based upon Federal preemption (R. 1-4), The Respondent demurred to the plea (R. 7). Upon hearing, the trial court overruled the demurrer, thereby sustaining the plea of Federal preemption. The Respondent took a judgment of non-suit and appealed to the Supreme Court of Alabama. By decision dated March 13, 1953 (*Russell v. International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO*, 258 Ala. 615, 64 So. 2d 384) the Supreme Court of Alabama reversed the decision of the trial court, holding that the National Labor Relations Board was without jurisdiction to redress an interference with the right to work during a strike by an order for the payment of money, and that the State of Alabama retained jurisdiction to entertain the Respondent's action for damages (R. 669-681).

B. Federal Preemption Denied

Upon reinstatement of the case, the trial court sustained the demurrer to the plea of Federal preemption, as directed by the Supreme Court of Alabama (R. 10-11). On the final day of the trial Respondent amended his complaint to strike all defendants except Petitioners.

(Continued from preceding page)

The only actual damage which was, or could have been, sustained by any plaintiff was the loss of five weeks wages, or an approximate maximum of \$450.00. The balance of the sums included in the verdicts were awarded as punitive damages which regulate and deter concerted activities.

Further proceedings in these cases are being held in abeyance pending the decision of the Court in this case. In addition, numerous other similar cases involving other unions, a portion of which are set forth in Appendix "B", *infra*, are awaiting disposition of the jurisdictional question herein raised.

The Respondent's complaint for damages, as amended (R. 4, 10) was in two counts. The first count claimed damages in the sum of \$50,000.00, in that the Union Petitioner was the bargaining agent for certain employees of the Respondent's employer and called a strike to begin on July 18, 1951, and in that the defendants, in order to make the strike effective, established a picket line and prevented the Respondent from entering his place of employment by means of mass picketing and threats of violence, thereby causing him to lose time from his work from July 18, 1951 to August 22, 1951.

Count Two added the allegation that the defendants had conspired together with other persons not made parties to the suit, to prevent plaintiff from entering his place of employment, and that in furtherance of the conspiracy had blocked the street by mass picketing and threats of violence, and had caused Respondent to lose time from his employment for one month.

Both counts claimed compensatory and punitive damages.

The Petitioners' Plea to the Jurisdiction (R. 1) alleged that the Calumet and Hecla Consolidated Copper Company, Respondent's employer, was an industry which affected interstate commerce; that the Petitioning Union was a labor organization; that during the period of time referred to in the complaint, the employees represented by the Union were engaged in a strike and maintained a picket line at the entrance to the employer's premises for the purpose of their mutual aid and protection, as was their right and privilege under the provisions of Section 7 of the National Labor Relations Act; that the complaint alleged an unfair labor practice which invades employee rights protected by Section 7 and as to which the National Labor Relations Board has exclusive remedial juris-

diction; and that state action in the premises would violate Article II, Section 8, paragraph 3 of the Constitution of the United States, in that Congress is thereby given exclusive jurisdiction to regulate interstate commerce.

The Respondent's demurrer to the Plea (R. 7) asserts that the jurisdiction of the National Labor Relations Board is not exclusive and that the State has concurrent remedial jurisdiction over the allegations of the complaint.

Upon the Petitioners' appeal from jury verdict and judgment in the amount of \$10,000.00, the Supreme Court of Alabama, while holding that the Respondent's cause of action was based solely upon an alleged interference with his employment during a strike (R. 650), nevertheless held that the jurisdiction of the National Labor Relations Board was not exclusive and that the trial court had jurisdiction to entertain the complaint and grant the relief prayed (R. 648-650). In reaching its decision the Supreme Court of Alabama relied upon the decision of the Supreme Court of Virginia in *United Construction Workers v. Laburnum Construction Corporation*, 194 Va. 872, 75 S. E. 2d 694 (which in turn had relied upon the earlier decision of the Supreme Court of Alabama in this case in reaching its decision), and upon the decision of this Court in the same case (347 U. S. 656).⁴ The Supreme Court of Alabama entered its decision on March 22, 1956 (R. 663), and timely application for rehearing was denied on June 21, 1956 (R. 668).⁵

⁴ This reliance was clearly misplaced as this case bears absolutely no resemblance to the factual situation presented by *Laburnum*, there being no destruction of physical property or unlawful interference with the employer's business by armed invasion of outsiders present here.

⁵ The following cases are believed to sustain the presentation of the Federal question. *Building Trades Council v. Kinard Construction Co.*, 346 U. S. 933; *Garner v. Teamsters Union*, 346 U. S. 485; *United Construction Workers v. Laburnum Construction Corp.*, 347 U. S. 656.

C. The Issues Adjudicated by the State Court and Jury

Petitioners plead the general issue and defended the action by contending and introducing evidence to prove that the Calumet and Hecla plant was closed by the strike, which was Federally protected activity and that, therefore, the Respondent was caused to lose no wages by the alleged excessive picketing—that is, so many employees voluntarily participated in the strike and picketing and refrained from working that the employer could not have operated the plant and made its decision not to attempt to operate prior to the time the strike began and the picket line was established; so that no work would have been available to Respondent even if he had entered his place of employment when the strike began (R. 651).⁶

The Calumet and Hecla Decatur plant is a continuous processing line operation, all of the departments of which, both maintenance and production, are highly integrated and interdependent (45, 248, 340; App. C. 13a). The plant employed slightly over five hundred hourly paid employees, of whom over four hundred voluntarily voted to strike on the day before the strike began, and at the beginning of the strike participated in picketing and drew strike benefits (R. 34, 122, 504, 507; App. C. 13a, 19a). On the day before the strike representatives of the employees advised the Company that a strike vote had been taken to enforce bargaining demands made during two months of fruitless negotiations, and inquired whether the Company needed any maintenance employees to protect the machinery and equipment of the plant during the strike. This offer was declined by the Company and the employees were advised

⁶ A complete brief of the evidence is set forth in Appendix "C". References herein are to the printed record and to Appendix C where appropriate.

that salaried employees were fully capable of taking care of any situation which might arise inside the plant during the strike (R. 286; App. C. 13a-14a). The employee representatives were also advised that hourly employees would not work during the strike (R. 287; App. C. 14a).

A. J. Babis, a company foreman, testified that he had advised employees under his supervision that they would not work during the strike as he had been advised that the plant would remain closed to hourly paid employees for the duration of the strike because of a discussion between the Company and the Union (R. 272; App. C. 20a). Several employees testified that they received similar instructions from their supervisors prior to the time the strike began (R. 332, 356, 367; App. C. 21a).

About 7:30 on the morning the strike began, before the eight o'clock shift of employees were scheduled to arrive at work, the Company stopped charging copper billets into the rotary furnace, as was the custom when the plant was preparing to close, and employees at work on the furnace were requested to remain at work past their regular quitting time and extrude the billets which were already heated (R. 340; App. C. 21a).

Respondent Russell, who was an electrician, employed by at-will contract at an hourly rate of \$1.75, approached the plant on the morning the strike began and some distance from the picket line was advised by employee Webster who was directing traffic at the request of police, that the plant was closed and that he should park his car. Russell replied: "Go to hell", and drove on toward the picket line (R. 534; App. C. 16a). Russell drove up to the picket line which was established at the end of the public road where it entered plant property and where a sign stated: "End of Public Street—Private Property". Pickets stationed at this point did not allow his automobile to pass (R.

21; App. C. 16a). After sitting in his automobile at the picket line for approximately an hour Russell left and did not return to the plant to work until August 22, 1951; approximately five (5) weeks later, when the plant reopened (R. 36; App. C 15a). Neither Russell nor his automobile was harmed in any manner (R. 81; App. C. 17a). He did not contact the Company to determine whether work was available but "assumed that there was no work (R. 48; App. C. 22a). Upon leaving the picket line Russell got together with other employees and organized a "back-to-work" movement and initiated petitions addressed to the Company as follows:

"If the Company will reopen the gates to the people, we will cross the picket line and return to work" (R. 52; App. C. 22a).

Russell advised his attorney that it would take from two hundred to two hundred and fifty employees to operate the plant and his attorney advised that at least this number would have to sign the back-to-work petition before the Company would agree to reopen the plant (R. 56; App. C. 22a). After five weeks Russell and other non-union employees were successful in procuring approximately two hundred and forty signatures to a petition which read as follows:

"The undersigned who were employed by you at the time of the work stoppage caused by the present strike do hereby request that you reopen your plant for work and we do individually propose to resume work for you on the same terms and conditions of employment, as were in effect at the time of the work stoppage" (R. 85; App. C. 22a-23a).

On or about August 20, 1951, this petition was delivered to the Company together with a letter from Respondent's

attorney urging upon the company its legal right to reopen the plant. Immediately upon receipt of the petition the Company by letter advised all employees that the plant would reopen on August 22 and that they should return to work (R. 49; App. C. 23a). It also ran newspaper advertisements to this effect (R. 45; App. C. 23a). This was the first occasion since the strike began on July 18 on which the Company evidenced any intention to operate the plant. It sought no injunction against excessive picketing, contacted no employees concerning work, and sought to bring in no materials up until the back-to-work petition was received.

In this connection, the Respondent showed by his evidence that less than forty employees, out of the total complement in excess of five hundred, evidenced any desire to work on the morning the strike began, July 18, and only two of these, one of whom was the Respondent, made any attempt to cross the picket line. All of the others approached to within from fifty feet to two hundred feet of the picket line and proceeded no further (App. C. 18a).

On August 20, after receiving the back-to-work petition, the Company sent its "dinky" locomotive out to pull in five cars of copper ingots which had been left at the picket line by the railroad. When the engine approached the pickets moved in front of it and it was unable to proceed. When it started back into the plant, it was discovered that unidentified persons had greased the railroad track, removed the distributor cap from the engine, and cut the air hose and fan-belt on the engine (R. 251-257; App. C. 25a). This occurred at a time when neither the Petitioner Volk, nor any other representative of the Union was present in the City of Decatur, and was the only incident which can be considered an actual disturbance which occurred during the entire strike (R. 294; App. C. 25a). The Respondent Rus-

sell was not present on this occasion, which was two days before the plant reopened (R. 258; App. C. 25a).

On August 22 the plant resumed operation with State Highway Patrolmen on hand. Russell resumed his work on that day and continued to work thereafter without interruption or molestation (R. 67; App. C. 23a).

Russell strongly opposed the organization of the Union and talked against it (R. 74; App. C. 24a). On the day before the strike he stated that the Union would never get a contract (R. 527; App. C. 15a). Immediately upon returning to work he organized an Industrial Employees Club, the purpose of which was "carrying on the employer-employee function without the intervention of any union" (R. 68-69; App. C. 24a); the club distributed literature attacking unions, which had been published by the Committee for Constitutional Government (R. 88; App. C. 24a). This literature was procured by Russell from the Decatur Chamber of Commerce, of which he, an hourly paid electrician, was a member (R. 68; App. C. 24a). He also belonged to the Decatur Country Club at which he socialized with management officials of the Company (R. 72; App. C. 24a). He testified before a committee of the Alabama State Legislature in favor of the Alabama "Right to Work" Bill (R. 74; App. C. 24a). After his return to work he petitioned the National Labor Relations Board for an election to decertify the Union (R. 74; App. C. 24a); He initiated the idea of the law suits against the Union and solicited other employees to file similar damage suits, his object being to get as many people as possible to file damage suits (R. 75; App. C. 24a).

This evidence was submitted to the jury by the trial court upon charges which instructed the jury as to the Federal rights of employees to form unions, to strike and

to picket (R. 624-625). The charges instructed in substance that if the loss of work to the plaintiff was due to the strike, then the plaintiff was not entitled to recover but that if his loss of work was due to excessive picketing then he was entitled to recover compensatory and punitive damages (R. 635, 636, 639, 641).⁷ In this connection Charge #9, given at the request of Respondent, which is set forth in the footnote below,⁸ was contended by Petitioners to have deprived them of their Federally protected right to strike, by permitting the jury to return an award of damages solely upon a finding that excessive picketing was engaged in, without the necessity of finding that work would have been available to Respondent during the Federally protected strike engaged in by the great majority of employees.

⁷ The language of the charges which authorized the State court jury to adjudicate federally guaranteed rights is set forth in footnote 22 at p. 59, *infra*.

⁸ "9. The court charges the jury that picketing is lawful when it is for the purpose of observation, or for the purpose of peaceful persuasion, or for the purpose of apprising others of a dispute between employer and employees, but that picketing is unlawful if carried on with intimidation, threats, coercion, force or violence. Picketing is unlawful if such a large number of pickets is utilized as to obstruct a public street and block the entrance to a plant from said street, or if the pickets used threats or abusive language towards others to such an extent as to instill fear of harm or injury in the mind of a reasonable man. The court further charges the jury that if the defendants in this case stationed or caused pickets to be stationed on a public street, as alleged in the complaint, for the purpose of preventing plaintiff and others from entering into their place of employment by means of intimidation, threats, coercion, force or violence, and if you are reasonably satisfied from the evidence that the number of pickets and their conduct as alleged in the complaint was such as to prevent the plaintiff by such unlawful means from entering his place of employment, and as a proximate consequence thereof the plaintiff was denied access to his place of employment for a long period of time you should return a verdict in favor of the plaintiff."

SUMMARY OF ARGUMENT

FEDERAL PREEMPTION

A. The Federal Regulatory Scheme.

The National Labor Relations Act, as amended by the Labor Management Act, evinces an intention of Congress to preempt the field so far as employee rights covered by Section 7 of the N. L. R. A. is concerned. *Bus Drivers v. W. E. R. B.*, 340 U. S. 383, 390, note 12; *Guss v. Utah Labor Relations Board*, 353 U. S. 1.

B. Nature of the Cause of Action.

This was a suit by an employee of an industry affecting interstate commerce seeking punitive damages for an alleged interference with his right to work during a lawful Federally protected strike by the members of a union certified by the National Labor Relations Board as bargaining agent. It was not a suit for assault and battery, property damage, or other common law tort for which damages could be allowed without regard to the background out of which the alleged tort arose or independent of an actual interference with the right of an employee to engage in his work. Neither was it a case of the exercise in an emergency of the historic powers of the state over traditionally local matters such as public safety and order, and use of streets and highways, as in *United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO v. Wisconsin Employment Relations Board and Kohler Co.*, 351 U. S. 266.

C. National Labor Relations Board Has Jurisdiction of the Subject Matter.

By virtue of Section 7 of the National Labor Relations Act, as amended, the right of employees in industries affecting interstate commerce to work during a strike is guaranteed.

Sections 8 (b) (1) (A) and 10 of the Act give the National Labor Relations Board the power and procedure with which to redress and remedy invasions of this right by unions. *Amalgamated Association of Street, Electric Railway, etc. Employees v. Wisconsin Employment Relations Board*, 340 U. S. 383, 390, note 12; *Sunset Line and Twine Co.*, 79 N. L. R. B. 1487; *Cory Corporation*, 84 N. L. R. B. 972.

D. Congressional Definition of Rights Plus Provision of a Specific Remedy to Protect and Regulate These Rights Constitute a Complete Scheme of Regulation, Having All the Criteria of Federal Preemption.

When Congress, acting within its constitutional powers, defines rights and provides a remedy for the protection and regulation of these rights, and invests the custody of the rights and the remedies to an administrative agency, such exercise of jurisdiction is preemptive. The remedy thus provided is exclusive and must be exhausted before any resort to the courts may be had, and the remedy supersedes common law rights of action accruing to individuals under the law of a state. *Switchmen's Union v. National Mediation Board*, 320 U. S. 297; *Aircraft Corporation v. Hirsch*, 331 U. S. 752; *Cloverleaf Butter Company v. Patterson*, 315 U. S. 148; *Western Union Telegraph Company v. Speight*, 254 U. S. 17.

The extent of the remedy provided represents an exercise of the judgment of Congress, and supplementary remedies provided by a state, even though not inconsistent with that provided by Congress, are ineffective as they are necessarily inconsistent with the extent of regulation Congress thought right. *Amalgamated Association, etc., Employees v. Wisconsin Employment Relations Board*, 340 U. S. 383; *Charleston and Carolina Railroad Company v. Varnville Co.*, 237 U. S. 597; *Missouri Pacific Railroad Company v. Porter*, 273 U. S. 341.

E. The Jurisdiction of the National Labor Relations Board to Regulate and Redress the Rights Protected by Section 7 is Exclusive.

Irrespective of the extent of the remedies and procedures delegated by Congress to the National Labor Relations Board, the States may not regulate in respect to rights guaranteed by Congress in Section 7 of the National Labor Relations Act. *Amalgamated Association, etc., v. Wisconsin Employment Relations Board*, 340 U. S. 383, 390, note 12; *International Union, UAW v. O'Brien*, 339 U. S. 454; *Hill v. Florida*, 325 U. S. 538; *Garner v. Teamsters Union*, 345 U. S. 485. This is true because, although it is designed to promote the public welfare, the National Labor Relations Act creates substantive private rights which are not dependent upon state law and the authority granted to the National Labor Relations Board to protect the rights of individuals is remedial and is not intended for the vindication of public wrong. *National Labor Relations Board v. Hearst Publications*, 322 U. S. 111; *Republic Steel Corporation v. N. L. R. B.*, 311 U. S. 7.

The foregoing is not in conflict with, but is consonant with, the holding of this Court in *United Construction Workers v. Laburnum Construction Corporation*, 347 U. S.

656, since in that case the plaintiff in the state court was an employer whose right to conduct his business free from violence is not protected by the Act and to whom no remedy has been provided or suggested as a substitute for traditional state Court procedure for collecting damages for injuries caused by conduct which was clearly both unprotected and unprivileged. In the instant case, however, the plaintiff is an employee whose rights are guaranteed by Section 7, and a substitute procedure to protect and redress these rights is provided by Sections 8 (b) (1) and 10.

Neither is such a holding inconsistent with the decisions of this Court which hold that such traditionally local matters as the control of violence and of the use of the public streets and highways remain in the states. In these cases the criteria was the need for protection of the public peace and order; whereas in the instant case no question of maintenance of public peace and order is involved and the subject matter solely concerns fundamental Section 7 rights—the interbalancing of the employee rights to engage in concerted activity and to refrain from such activity, which subject matter was entrusted by Congress to the National Labor Relations Board.

F. If the Extent of Relief Provided by Congress is a Relevant Consideration, It Is Apparent From the Provisions of the Act That the Power of the National Labor Relations Board to Enter Remedial and Reparation Orders is Coextensive With the Discretion Granted to It to Effectuate the Policies of the Act.

The Board has held that it cannot enter an award of back pay for wages lost as a result of interference with the right of ingress to the place of employment during a strike (*Colonial Hardwood Flooring Co., Inc.*, 84 N. L. R.

B. 563; *United Mine Workers of America and West Kentucky Coal Co.*, 92 N. L. R. B. 916). Such is a decision upon a question of law and not an exercise of administrative discretion, and is of doubtful validity.

The entire remedial power granted to the Board is defined in Section 10 of the Act and the authority contained in this Section is identical, no matter what section of the Act is violated. The construction of the Act by the Board, limiting its power in cases of alleged interference with the right to work, is difficult to reconcile with the decisions of this Court in *Phelps-Dodge Corp. v. N. L. R. B.*, 313 N. L. R. B. 177, and *Virginia Electric and Power Co. v. N. L. R. B.*, 319 N. L. R. B. 533, which hold that the authority of the Board to frame remedial orders is coextensive with the effectuation of the policies of the Act. Such decision is also inconsistent with the Congressional policy expressed in Section 1 (b) of the Labor Management Relations Act and with the legislative history of Section 10 (e) (See Appendix "D"). Furthermore, such decision by the Board is inconsistent with other Board decisions involving violations of Section 8 (b) (1) of the Act in which it has held that it does have authority to enter a remedial order requiring the payment of money in such cases. E. g., *Eclipse Lumber Company, Inc.*, 95 N. L. R. B. 464.

Under Section 10 (e) of the Act the Board has authority to require a person * * * "to take such affirmative action * * * as will effectuate the policies of this Act;" and this power is not limited by the illustrative phrases "including reinstatement of employees with or without back pay" and "provided that back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him." *Phelps-Dodge Corp. v. N. L. R. B.* and *Virginia Electric and Power Co. v. N. L. R. B.*, *supra*. The latter proviso does

not limit the authority of the Board, but provides only that a union may *alone* be held responsible when it acts through an employer to commit an unfair labor practice involving discrimination:

G. The Protection of the Right to Strike and the Inter-balancing of This Right With the Right of Employees to Work in the Face of a Strike Cannot Be Accomplished by a Multiplicity of Procedures and Tribunals.

It was the aim of Congress to entrust the matter of the interbalancing of the right to strike and the right of employees to work in the face of a strike to the National Labor Relations Board where they could be regulated by a single harmonious pattern of rules administered by an expert agency under uniform procedure. *Guss v. Utah Labor Relations Board*, 353 U. S. 1. In so doing Congress intended to dispel the confusion which would result from a dispersion of authority and from a multiplicity of regulations. *Garner v. Teamsters Union*, 346 U. S. 485; *Amalgamated Utility Workers v. Consolidated Edison Co.*, 301 U. S. 261.

The right of employees to organize and to strike is a fundamental right guaranteed to employees by Section 7 of the National Labor Relations Act. *N. L. R. B. v. Jones & Laughlin Steel Corp.*, 301 U. S. 1; *Amalgamated Association of Street, etc. Employees v. Wisconsin Employment Relations Board*, 304 U. S. 383. Existence of a guaranteed right to engage in lawful concerted activity carries with it the necessary guarantee that such right may be exercised free of liability in damages for loss occasioned thereby to others. *Restatement of Torts*, Sec. 809. The trial judge in the instant case recognized the privileged nature of a lawful strike and that no damages could be awarded which were the proximate result of the strike as

distinguished from picketing. In so recognizing the right to strike, the trial judge charged the jury upon the federal rights of Petitioners accruing under the National Labor Relations Act, and thereby placed into the hands of a state court jury the interpretation and protection of Federal rights which had been entrusted by Congress to the National Labor Relations Board.

The jury returned a verdict which included in excess of \$9,500.00 in punitive damages which are damages of a regulatory nature for the purpose of deterring the wrong-doer and others from similar acts. As such, punitive damages in their nature are policy measures which invade national policy entrusted exclusively to the National Labor Relations Board; and not mere police measures which control the public peace and order. This was done upon evidence which did not authorize the imposition of punishment upon the exercise of the Federal right to strike and to picket, and where the National Labor Relations Board undoubtedly would not have held that these Federal rights had been exceeded or waived. *N. L. R. B. v. Elkland Leather Co.*, 114 F. 2d 221 (C. A. 3, 1940); *N. L. R. B. v. Remington-Rand*, 94 F. 2d 862 (C. A. 2, 1938); *Milkwagon Drivers v. Meadowmoor Dairies, Inc.*, 312 U. S. 287.

If there is to be federally protected right to strike, such right cannot exist where it is to be subjected to punitive regulations by the opinions and prejudices of jurors in the thousands of state trial courts throughout the nation with power to override national policy as to the extent of permissible activity protected by Section 7.

This is not to say here that mass picketing, threatening of employees, obstructing streets and highways, and picketing of homes, are matters which the state may not prohibit in the exercise of its police powers in an emergency.

Picketing, under the regulations heretofore established by this Court, can be controlled without reaching into the field of interbalancing the rights of employees protected by Section 7; however, no such application for emergency relief was sought in the present case.

The problem of filtering from the facts the answer to questions of such complexity, that is whether or not the bounds of activity protected and privileged by federal policy have been exceeded, and if so, whether financial loss to employees has resulted, can best be left to the skill and professional discernment of the National Labor Relations Board. Such matters "require a special training to enable anyone even to form an intelligent opinion about them." *Vegelahn v. Guntner*, 167 Mass. 92, 105-6, Holmes, J., dissenting.

ARGUMENT

A. THE FEDERAL REGULATORY SCHEME

In Section 1 of the National Labor Relations Act (July 5, 1935, c. 372; 49 Stat. 449; 29 U. S. C. §151) Congress stated in its findings and policies that the denial by employers of the right of employees to organize and the refusal of employers to accept the procedures of collective bargaining lead to strikes and industrial strife and unrest which burden and obstruct commerce. It further found as follows:

"Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encourag-

ing practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

"It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

To implement this declaration of policy Congress enacted Section 7 (29 U. S. C. 157) which stated that employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

It also provided Section 8 (29 U. S. C. 158), which stated: "It shall be an unfair labor practice for an employer *** to interfere with Section 7 guarantees."

The National Labor Relations Act, therefore, undertook to define only affirmative employee rights and protected the limited guarantees against invasion by employers only. It made no attempt to define negative employee rights or to regulate activity or conduct of unions in any respect whatsoever.

In enacting the Labor Management Relations Act, 1947, Congress amended Section 1 of the National Labor Relations Act by adding the following paragraph:

“Experience has further demonstrated that certain practices by some *labor organizations*, their officers and members, have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest, or through concerted activities which impair the interest of the public in the free flow of such commerce. Elimination of such practices is a necessary condition to the assurance of the rights herein *guaranteed*” (29 U. S. C. 151).

It also provided that it was the purpose and policy of the Labor Management Relations Act, 1947, “in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, *to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce*, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare and to protect the rights of the public in connection with labor disputes affecting commerce.” [29 U. S. C. 141 (b); italics added.]

To effectuate this broadened expression of policy and purpose, Section 7 was amended so as to provide that employees shall have the right to refrain from any or all of the activities which were protected to them by the National Labor Relations Act, thus protecting, for instance, the right of an employee to work while other employees

engaged in a strike. And, Congress, also, by amending Section 8 to add Section 8 (b) provided for unfair labor practices on the part of labor organizations and their agents, among which was the restraint or coercion of the employees in the exercise of rights guaranteed in Section 7, that is, the right to refrain from engaging in concerted conduct (29 U. S. C. 158 (b) (1) (A)).

In addition, Congress in Sections 8 (b) (1) (B), 8 (b) (3), 8 (b) (4) and 8 (b) (6) enacted provisions which were designed to protect employers from certain defined improper practices of unions. By 8 (b) (1) (B) an employer was to be free in the selection of his collective bargaining representatives; by 8 (b) (3) an employer was protected from a refusal to bargain on the part of the union, and by 8 (b) (4) the employer was protected from certain other condemned practices. Section 8 (b) (6) protected an employer against the collection of money for services not performed (29 U. S. C. 158).

Thus, the amended Act, while carrying forward the original scope of the National Labor Relations Act and defining and remedying employer unfair practices, declared certain illegal practices on the part of unions, among which were interference with the rights of employees to refrain from concerted activities and to work, and certain rights of employers. The right of the employer to carry on his business free from restraint and coercion by violence or threats of violence was *not* one of the unfair labor practices defined in the amended Act.

While the original National Labor Relations Act provided for no court remedies other than for the enforcement of Labor Board orders, the Labor-Management Relations Act amendments provided for suits by and against labor organizations for violation of contracts (29 U. S. C.

185) and for suits against labor organizations in the case of violations of Section 8 (b) (4) (29 U. S. C. 187). It also provided for the creation of the Federal Mediation and Conciliation Service, for alleviating national emergencies caused by labor disputes, for restrictions upon certain payments to labor organizations, and for restrictions upon political contributions by unions.

The National Labor Relations Act as amended by the Labor Management Relations Act, together with the other new provisions of the Labor Management Relations Act, thus outlined a virtually complete code of labor regulations and left unregulated and to the states very little of the field which had not been covered by the National Labor Relations Act prior to its amendment.

The field which was left to the states has been narrowly defined by the Court in the following decisions:

Allen Bradley Local v. Wisconsin Board, 315 U. S. 740;

Garner v. Teamsters Union, 346 U. S. 485;

Weber v. Anheuser-Busch, Inc., 348 U. S. 468;

United Automobile Workers v. Kohler Co., 351 U. S. 266;

United Construction Workers v. Laburnum Construction Corp., 347 U. S. 656.

The areas left to the states by these decisions parallel to a great degree the same field of activity which was left to the regulation of the Federal courts by the Norris-LaGuardia Act. After the enactment of the Norris-LaGuardia Act the Federal court could still issue an injunction, the purpose of which was the emergency protection of property and the maintenance of law and order. The Norris-LaGuardia Act is thus an express declaration that,

as has been recognized by the Court in its decisions involving the exercise of the police power of the states, the maintenance of law and order and of the public peace and tranquility remain a police function, which is to be narrowly exercised by the courts in a proper case.

These three Acts construed together, indicate an intention upon the part of Congress to establish a full and complete policy concerning labor activity in interstate commerce, together with the provisions it thought necessary to implement these policies. These policies include the recognition and the guarantee of, and the establishment of machinery for the protection of, the right of employees to engage in collective bargaining and other concerted conduct, as well as the right to abstain from such conduct.

The establishment of this machinery does not envisage the necessity for the state or for the Federal Courts, under the guise of the police power, to intrude into the sphere of interbalancing the rights which are regulated by Congress for the purpose of removing obstructions to interstate commerce.

B. SUBJECT MATTER OF THE ACTION—ALLEGED INTERFERENCE WITH EMPLOYEE'S RIGHT TO WORK DURING A LAWFUL STRIKE.

This is not a case of the exercise by the State of Alabama of its "historic powers over such traditionally local matters as public safety and order and the use of streets and highways." (*Allen-Bradley Local v. Wisconsin Board*, 315 U. S. 740, 749; *Garner v. Teamsters Union*, 346 U. S. 485, 488). Neither was it a suit for assault and battery, property damage or other common law tort for which damages could be allowed without regard to the background out of which the alleged tort arose, or independ-

ent of an actual interference with the right of an employee to engage in his employment.⁹

This was a suit to recover damages for an alleged interference with an hourly employee's right to work by the claimed means of excessive picketing during a lawful strike conducted by a union which was the "bargaining agent" of the employees.¹⁰ These matters are alleged in the complaint, which was filed almost a year after the events in question, and were held by the Supreme Court of Alabama to state a cause of action "preventing plaintiff from engaging in his employment" (R. 650).

⁹ It has long been the established law of Alabama, in accord with the general rule, that an individual cannot recover damages for the alleged obstruction, by any means whatever, of a public street, unless he can show special damages accruing to him personally which differ, not in degree, but in *kind*, from those which may result to the public generally. *Walls v. C. D. Smith & Co.*, 167 Ala. 138, 52 So. 320; *Ex parte Ashworth*, 204 Ala. 391, 86 So. 84; *Birmingham Ry., Light and Power Co. v. Smyer*, 181 Ala. 121, 61 So. 354; *Cassineus v. Levystein*, 176 Ala. 365, 58 So. 280; *Dugay v. Ala. West. RR. Co.*, 175 Ala. 162, 57 So. 724; *Weiss v. Taylor*, 144 Ala. 440, 39 So. 519; *Russell v. Holderness*, 216 Ala. 95, 112 So. 309; *Horton v. Southern Ry. Co.*, 173 Ala. 231, 55 So. 531; *First Avenue Coal, etc. Co. v. Johnson*, 171 Ala. 470, 54 So. 598. Where, as here, the alleged obstruction was at the end of the public street where it entered the private property of the employer, the plaintiff, to recover wages claimed to have been lost, had the burden of proving his special damages by proving that work would have been available to him—an employee hired and paid by the hour, whose contract of employment was terminable at will—had he entered his employer's premises. *Prosser, Torts*, Sec. 106 (2nd Ed., 1955).

¹⁰ The strike, voted by the employees to enforce their bargaining demands, was admittedly legal, Federally protected activity in an industry affecting interstate commerce.

C. NATIONAL LABOR RELATIONS BOARD HAS JURISDICTION OVER THE SUBJECT MATTER OF THE ACTION:

Section 7 of the National Labor Relations Act, as amended, guarantees and protects the right of employees to form and join unions and to engage in other concerted activities and, likewise, guarantees and protects the right of employees to refrain from concerted activities. Section 8 (b) (1) (A) proscribes the interference with these rights by a labor organization or its agents; and Section 10 invests the National Labor Relations Board with jurisdiction, power and procedures with which to deal with invasions of these rights.¹¹

¹¹ "Sec. 7. Employees have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8. (a) (3)." (29 U. S. C. 157.)

"Sec. 8 (b). It shall be an unfair labor practice for a labor organization or its agents—(1) to restrain or coerce (A) employees in the exercise of rights guaranteed in section 7 * * *." (29 U. S. C. 158 (b) (1).)

"Sec. 10 (a). The Board is empowered, as hereinafter provided to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting Commerce * * *.

"(c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such persons to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without pay, as will effectuate the policies of this Act: Provided, That where an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him:

(Continued on next page)

Applying these sections, the Board has repeatedly held that it is a violation of Section 8 (b) (1) (A) of the Act for a labor organization or its agents to interfere by means of picketing, violence or threats of violence, with the right of an employee to work during a strike and that it has jurisdiction over invasions of this right.¹²

(Continued from preceding page)

* * *

"(j) The Board shall have power, upon issuance of a complaint provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any district court of the United States (including the District Court of the United States for the District of Columbia), within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper."

(29 U. S. C. 160 (a) (e) and (j).)

¹² E. g. *Sunset Line and Twine Co.*, 79 N. L. R. B. 1487, 1504, where the Board said:

"Under this Section one of the new statutory provisions in which union unfair labor practices are defined and proscribed, the essential elements of a violation are three-fold. There must be (1) restraint or coercion, (2) practiced by a labor organization or its agents, (3) against employees in the exercise of rights guaranteed in Section 7 of the Act.

"In this case the trial examiner accepted the general counsel's premises that the third element is present, namely, the protected right of employees to 'refrain' from striking, that is, to work in the face of the strike."

"We agree that employees enjoy that protected right under the Act, as amended, and that there was interference with its exercise in this case."

Accord: *Smith Cabinet Mfg. Co.*, 81 N. L. R. B. 886; *In re Coors Corporation*, 84 N. L. R. B. 972; *B. H. Swaney, Inc.*, 95 N. L. R. B. 54; *Fairmont Construction Co.*, 95 N. L. R. B. 969; *W. T. Smith Lumber Co.*, 116 N. L. R. B. No. 64.

This construction of Section 8 (b) (1) accords with expressions of legislative intent at the time the provision was being considered by Congress,¹³ and with the holding of this Court in footnote 12 to the opinion in *Amalgamated Association of Street, Electric Railway, etc., Employees v. Wisconsin Employment Relations Board*, 340 U. S. 383, 390, where the Court held:

"Section 7 of the Labor Management Relations Act not only guarantees the right of self organization and the right to strike, but also guarantees to individual employees the 'right to refrain from any or all of such activities' at least in the absence of a union shop or similar contractual arrangement applicable to the individual. Since the N. L. R. B. was given jurisdiction to enforce the rights of the employees, it was clear that the Federal Act had occupied this field to the exclusion of state regulation. Plankinton and O'Brien both show that states may not regulate in respect to rights guaranteed by Congress in §7."

¹³ Senator Taft said:

"I think when we get to the case of unions there might be the actual act of forcibly, by mass picketing, preventing a man from working.

"Let us take the case of mass picketing which absolutely prevents all the office force from going into the office of the plant. That would be a restraint and coercion against those employees, and interference with their right to work. * * * The effect of the pending amendment is that the Board may call the union before them, exactly as it has called the employer, and say, 'Here are the rules of the game. You must cease and desist from coercing and restraining the employees who want to work from going to work and earning the money which they are entitled to earn.' The Board may say, 'You can persuade them; you can put up signs; you can conduct any form of propaganda you want to in order to persuade them, but you cannot, by threat or force, or threat of economic reprisal, prevent them from exercising their right to work.' As I see it that is the effect of the amendment." 93 *Congressional Record* 4562.

D. CONGRESSIONAL GUARANTEE OF RIGHTS PLUS PROVISION OF A SPECIFIC REMEDY TO PROTECT AND REGULATE THESE RIGHTS CONSTITUTE A COMPLETE SCHEME OF REGULATION HAVING ALL THE CRITERIA OF FEDERAL PREEMPTION, AND THE NATURE OR EXTENT OF THE RELIEF PROVIDED BY CONGRESS IS IMMATERIAL. THE JURISDICTION OF THE N. L. R. B. TO PROTECT RIGHTS GUARANTEED TO EMPLOYEES BY SECTION 7 IS THEREFORE EXCLUSIVE.

The quotation from the *Bus Drivers'* case, *supra*, reiterates the construction which this Court has historically placed upon Article I, Sec. 8, and Article VI, Clause 2 of the Constitution of the United States. The Court has always held that the power of Congress over interstate commerce and matters which affect or burden commerce is plenary and is as broad as the police powers of the states. *National Labor Relations Board v. Jones and Laughlin Steel Corp.*, 301 U. S. 1; *Gibbons v. Ogden*, 9 Wheat. 195:

“The two laws may not be in such absolute opposition to each other, as to render the one incapable of execution, without violating the injunctions of the other; and yet, the will of one legislature may be in direct collision with that of the other. This will is to be discovered, as well by what the legislature has not declared, as by what they have expressed. Congress, for example, has declared, that the punishment for disobedience of the act of Congress, shall be a certain fine; if that provided by the State legislature for the same offense be a similar fine, with the addition of imprisonment or death, the latter law would not prevent the former from being carried into execution, and may be said, therefore, not to be repugnant to it. But surely the will of Congress is, nevertheless, thwarted and opposed.”

" * * * Congress has exercised the powers conferred on that body by the Constitution, as fully as was thought right, and has thus excluded the power of legislation by the States on these subjects, except so far as it has been permitted by Congress; although it should be conceded, that important provisions have been omitted, or that others which have been made might have been more extended, or more wisely devised."

Houston v. Moore, 5 Wheat. 1, 21-23, Justice Washington speaking for the Court.

When Congress undertakes to legislate on a subject, it must be presumed that the Congressional regulations go as far as Congress "thought right"; and State regulation or action which goes further than the Congressional regulation (by imposing staggering punitive damages, for example), even though it be not incompatible with the Congressional regulation in its intent and purpose, is nevertheless necessarily inconsistent with and contradictory of the judgment of Congress as to how far the regulation should go. *Amalgamated Association of Street, etc. Employees v. Wisconsin Employment Relations Board*, 340 U. S. 383.¹⁴

¹⁴ "When Congress has taken the particular subject matter in hand, coincidence is as ineffective as opposition and a State law is not to be declared a help because it attempts to go further than Congress has seen fit to go." *Charleston and Carolina Railroad v. Varnville Co.*, 237 U. S. 597, 604.

"Congress must be deemed to have determined that the rule laid down and the means provided by the Cormack and Cummins amendments to the Interstate Commerce Act to enforce it are sufficient and that no other regulation is necessary. Its power to regulate such commerce * * * is supreme; and as that power has been exerted, state laws have no application. They cannot be applied in coincidence with, as complementary to, or as in opposition to, Federal enactments which disclose the intention of Congress to enter a field of regulation that is within its jurisdiction." *Missouri Pacific Railroad Co. v. Porter*, 273 U. S. 341, 345.

This Court has also in many and varied instances and applications held that rights of action accruing to individuals under the common law of a state are superseded by acts of Congress regulating interstate commerce. E. g., *Western Union Telegraph Co. v. Speight*, 254 U. S. 17; *Texas and Pacific Railway Company v. Abilene Cotton Oil Company*, 204 U. S. 426:

*** * *. It is for Congress to determine how the rights which it creates shall be enforced * * *. In such a case the specification of one remedy normally excludes another."

Switchmen's Union v. National Mediation Board,
320 U. S. 297, 301.

Where Congress has, as here, provided an administrative remedy, such remedy is exclusive and must be exhausted before any resort to the courts, state or federal, may be had. *Aircraft Corporation v. Hirsch*; 331 U. S. 752, 767, 768, and cases cited.

In accordance with the foregoing principles, the Court has repeatedly and consistently held that the jurisdiction of the National Labor Relations Board to regulate and interbalance the rights of employees protected by Section 7 of the National Labor Relations Act, as amended, is exclusive, and is not to be aided by concurrent efforts of states to afford additional protection.

In *International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO v. O'Brien*, 339 U. S. 454, 456, this Court said:

(Continued from preceding page):

"* * * where the United States exercises its power of legislation so as to conflict with a regulation of the State, either specifically or by implication, the State legislation becomes inoperative and the Federal legislation is exclusive in its application." *Cloverleaf Butter Company v. Patterson*, 315 U. S. 148, 156.

"Congress has not been silent on the subject of strikes in interstate commerce. In the National Labor Relations Act of 1935, 49 Stat. 449, 29 U. S. C., Sec. 151, as amended by the Labor Management Relations Act, 1947, 61 Stat. 136, 29 U. S. C. (Supp. III) Sec. 141, Congress safeguarded the exercise of employees of 'concerted activities' and expressly recognized the right to strike. It qualified and regulated that right in the 1947 Act."

In that case this Court invalidated the application of the Michigan strike vote law to strikes in industries affecting interstate commerce.

In *Hill v. Florida*, 325 U. S. 538, the Court invalidated the Florida law requiring a license for labor representatives because the law limited the freedom of choice of bargaining representatives by employees and impinged upon the collective bargaining process protected by the National Labor Relations Act.

In *Bethlehem Steel Company v. New York State Labor Board*, 330 U. S. 887, and in *Plankinton Packing Company v. Wisconsin Employment Relations Board*, 338 U. S. 953, the Court protected the jurisdictional integrity of the National Labor Relations Board as to unit certifications and as to remedies for unfair labor practices against inroads by state agencies.

Concerning these decisions, in footnote 12 to the *Bus Drivers*' case, *supra*, the Court explained they held that the States may not regulate in respect to rights guaranteed by Congress in Section 7 of the Act.

In *Garner v. Teamsters Union*, 346 U. S. 485, 490, the Court made it clear that the conflict of jurisdiction between federal and state procedures applied to regulation by state courts as well as to state administrative agencies, saying:

"Congress did not merely lay down a substantive rule of law to be enforced by any tribunal competent to apply law generally to the parties. It went on to confide primary interpretation and application of its rules to a specific and specially constituted tribunal and prescribed a particular procedure for investigation, complaint and notice, and hearing and decision, including judicial relief pending a final administrative order. Congress evidently considered that centralized administration of specially designed procedures were necessary to obtain uniform application of its substantive rules and to avoid these diversities and conflicts likely to result from a variety of local procedures and attitudes toward labor controversies * * *. A multiplicity of tribunals and a diversity of procedures are quite as apt to produce incompatible or conflicting adjudications as are different rules of substantive law. The same reasoning which prohibits federal courts from intervening in such cases, except by way of review or an application of the federal Board, precludes state courts from doing so. Cf. *Myers v. Bethlehem Shipbuilding Corp.*, 303 U. S. 41; *Amalgamated Utility Workers v. Consolidated Edison Co.*, 309 U. S. 261. And the reasons for excluding state administrative bodies from assuming control of matters expressly placed within the competence of the federal Board also exclude state courts from like action. Cf. *Bethlehem Steel Co. v. New York Board*, 330 U. S. 767."

In the same case the Court pointed out that the conflict in duplicate regulation or jurisdiction between state and federal authorities is primarily a conflict in remedies, and that where a federal remedy has been provided in the public interest, the state remedy for the protection of primarily private rights must yield, as follows:

"Further, even if we were to assume, with petitioners, that distinctly private rights were enforced by the state authorities, it does not follow that the state and federal authorities may supplement each other in cases of this type. The conflict lies in remedies, not rights. The same picketing may injure both public and private rights. But when two separate remedies are brought to bear on the same activity, a conflict is imminent" (346 U. S. 485, 498).

"We conclude that when federal power constitutionally is exerted for the protection of public or private interest, or both, it becomes the supreme law of the land and cannot be curtailed, circumvented or extended by a state procedure merely because it will apply some doctrine of private right. To the extent that the private right may conflict with the public one, the former is superseded" (346 U. S. 485, 500).

However, the Court has held that the National Labor Relations Act, while regulating interstate commerce in the public interest, creates and protects substantive rights which are not dependent upon state law, (*National Labor Relations Board v. Hearst Publications*, 322 U. S. 111, 123); and that the authority granted to the National Labor Relations Board to protect the rights of individuals is remedial and is not intended for the vindication of public wrongs:

"The Act is essentially remedial. It does not carry a penal program declaring the described unfair labor practices to be crimes. The Act does not prescribe penalties or fines in vindication of public rights or provide indemnity against community losses as distinguished from the protection and compensation of employees ***. All of these measures relate to the protection of the em-

ployees and the redress of their grievances, not to the redress of any supposed public injury * * *."

Republic Steel Corp., v. N. L. R. B., 311 U. S. 7, 10-11;

Cf.; *Consolidated Edison Co. v. N. L. R. B.*, 305 U. S. 197, 235.

From the foregoing decisions, the true rule of preemption obviously is that it is the creation or protection of rights and the provision by Congress of a remedy, or machinery, to enforce the rights thus created or protected, which constitute the criteria for the determination of whether the Congressional regulation is exclusive and that the source or means of interference with these rights is immaterial.¹⁵ *Garner v. Teamster's Union*, 346 U. S. 485, 490.

Thus, the existence of actual or threatened force or violence is not determinative in the solution of the problem of jurisdiction. This case, like the *Garner* case, but unlike the *Kohler* case,¹⁶ does not involve the exercise of emergency powers of the state to maintain law and order, but involves solely, to reiterate, the interbalancing of rights protected by Section 7 of the Act. This function has been committed by Congress to the National Labor Relations Board.

¹⁵ "It is a familiar principle that acts which directly burden or obstruct interstate or foreign commerce, or its free flow, are within the reach of the Congressional power. Acts having that effect are not rendered immune because they grew out of labor disputes. * * * It is the effect upon commerce, not the source of the injury, which is the criterion." *National Labor Relations Board v. Jones and Laughlin Steel Corp.*, 301 U. S. 1, 31.

¹⁶ *United Automobile, Aircraft and Agricultural Implement Workers of America v. Wisconsin Employment Relations Board and Kohler Company*, 351 U. S. 266; 76 S. Ct. 794.

In accordance with its policy to protect *employees* in their relations with labor unions, Congress has given the Board express power to adjudicate the rights of employees to engage in concerted conduct or to refrain from such conduct and to provide such relief to employees as it may deem necessary to protect these rights entrusted by Congress to its expert custody. It follows that, Congress having taken the subject matter of employee rights in hand, and having entrusted their care to the National Labor Relations Board, the jurisdiction thus exercised and the remedies thus created are exclusive.

Irrespective of and without regard to what relief may be available to employees before the Labor Board, it must be deemed that Congress went as far as it thought proper and provided for all the relief it thought necessary and, advisable to accomplish the Congressional purpose. An attempt by the State to provide additional or more complete relief than Congress thought right is as ineffective as direct opposition to the Congressional enactment, because to grant further relief to one of the parties against the other would destroy the Congressional scheme and aim of *interbalancing* employee rights as a means of removing obstructions to the flow of interstate commerce.

E. THE DOCTRINE OF EXCLUSIVENESS AS TO REGULATION OF SECTION 7 EMPLOYEE GUARANTEES DOES NOT CONFLICT WITH ANY PREVIOUS PRONOUNCEMENTS OF THIS COURT—KOHLER AND LABURNUM DISTINGUISHED.

The decisions of the Court upholding state action which actually or potentially overlaps the subject matter covered by the National Labor Relations Act and the jurisdiction of the National Labor Relations Board, have restricted permissible state action to two specific types of cases:

(1) Where the traditional police power of the state was exercised to maintain public safety and order and the use of streets and highways; and (2) Where the subject matter *in judicia* was not regulated or protected by the Federal Act, and where no parallel remedy is provided before the National Labor Relations Board.

(1) Exercise of Police Power.

The instant case was not an exercise by the state of its "historic powers over such traditionally local matters as public safety and order and the use of streets and highways." (*Allen-Bradley Local v. Wisconsin Board*, 315 U. S. 740, 749; *Garner v. Teamsters Union*, 346 U. S. 485, 488), such as that which was recently upheld in the case of *United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO, v. Wisconsin Employment Relations Board and Kohler Co.*, 351 U. S. 266.

As was previously discussed (pp. 26-27, *supra*), Congress in the Norris-LaGuardia Act expressly declared that, within narrowly defined bounds, the courts are a proper instrument through which law and order may be maintained and physical property protected in an emergency. The maintenance of law and order, the protection of homes and physical property, and the prevention of obstructions to the public use of streets and highways, are all emergency functions, traditionally local in their nature. These emergency exercises of the police power, however, are far removed from an intrusion into the field of Congressional policy as to protected labor activity in interstate commerce. Such functions do not require or include the protection of the right to work or the regulation and limitation of the right to strike in an industry affecting interstate commerce by the imposition of punitive damages. Such is the regulation of Section 7 rights, a sphere in

which "Congress has expressed its judgment in favor of uniformity" and has evidenced "a general intent to preempt the field," *Guss v. Utah Labor Relations Board*, 353 U. S. 1, —; *Amalgamated Meat Cutters v. Fairlawn Meats, Inc.*, 353 U. S. 20.

(2) Where the Rights Are Unregulated and Where Congress Has Provided No Parallel Remedy.

Neither does the present case involve an instance of injurious conduct neither prohibited, regulated nor protected by the Federal Act which would be entirely ungoverned unless governable by the state, such as that which was present in *International Union, UAW-AFL v. Wisconsin Employment Relations Board*, 336 U. S. 245, 254.

Nor is it a case such as that before the Court in *United Construction Workers v. Laburnum Construction Corp.*, 347 U. S. 656, 663, where "Congress has neither provided nor suggested any substitute for the traditional state court procedure for collecting damages for injuries caused by tortious conduct." There the complaining party, or plaintiff, in the court below was an employer whose rights are not attempted to be protected by Congress in Section 7 of the National Labor Relations Act, and whose rights when violated cannot be redressed under Section 8 (b) (1) of the National Labor Relations Act; whereas, here the Respondent is an employee whose right to refrain from striking and to work in the face of a strike are specifically protected by Section 7 of the Act, and to whom a specific remedy is granted by Section 8 (b) (1) of the Act for the violation of these rights.

The Act, as amended, neither regulates nor protects the employer rights adjudicated in the *Laburnum* case, nor does it supply a remedy parallel to that exercised by the

State court in that case. Section 7 of the National Labor Relations Act protects the rights of *employees*, not employers. Section 8 (b) (1) (A) of the Act condemns the infringement of these rights and Section 10 of the Act provides an administrative remedy, with ultimate resort to the courts, in event of alleged infringement.

The Act thus protects the rights of employees to work during a strike against coercion by any means, including actual or threatened violence, and provides a remedy for the enforcement of this right. It does not protect the right of an employer to engage in his business or occupation against similar infringement and provides no remedy to an employer which he may pursue in the event the operation of his business is interfered with in parallel instances.

True, an employer may file a charge that an unfair labor practice has been committed and thereby put in motion the investigative machinery of the Board, but in so doing, a charge of violation of Section 8 (b) (1) (A), by whomever filed, will put in motion only machinery designed to protect and vindicate the rights of employees. No machinery designed to protect the parallel rights of the employer is provided by the Act.

In the decision of the *Laburnum* case, this Court emphasized that its decision applied only to an employer who had no remedy before the National Labor Relations Board, saying:

"To the extent that Congress prescribed preventive procedure against unfair labor practices, that case recognized that the Act excluded conflicting state procedure to the same end. To the extent, however, that Congress has not prescribed procedure for dealing with the consequences of tortious conduct already committed, there is no ground for concluding that existing criminal penal-

ties or liabilities for tortious conduct have been eliminated" (347 U. S. 656, 665).

Again emphasizing that it did not intend that the *Laburnum* decision should apply to any case in which an administrative remedy was provided by the Federal Act, in *Weber v. Anheuser-Busch, Inc.*, 348 U. S. 468, the Court twice distinguished the *Laburnum* case, saying:

"Finally, *United Construction Workers v. Laburnum Construction Corporation*, 347 U. S. 656, was an action for damages based on violent conduct which the state court found to be a common law tort. While assuming that an unfair labor practice under the Taft-Hartley Act was involved, this Court sustained the state judgment on the theory that there was no compensatory relief under the federal Act and no federal administrative relief with which the state remedy conflicted (348 U. S. 468, 477)."

Our approach was emphasized in *United Construction Workers v. Laburnum Construction Corporation, supra*, where the violent conduct was reached by a remedy having no parallel in, and not in conflict with, any remedy afforded by the federal Act"¹⁷ (348 U. S. 468, 480).

¹⁷ Our construction of the ruling of the Court in the *Laburnum* case is buttressed by the holding of the Ninth Circuit on rehearing in the case of *Born v. Laube*, and of the Supreme Court of the State of Washington in *Mahoney v. Sailor's Union of the Pacific*.

"We have carefully considered the *Laburnum* decision and are of opinion that it is distinguishable inasmuch as the complaining party there, under the Labor Management Act, was wholly without remedy in damages for the tortious conduct of the Union. Here the complaining employee had available the remedy of reinstatement with back pay." (*Born v. Laube*, 214 F. 2d 349 (C. A. 9), cert. den. 348 U. S. 855.)

(Continued on next page)

If the right of an employer to conduct his business and to own property free from interference or damage by violence had been guaranteed by the National Labor Relations Act, and if the Labor Board had been charged with the responsibility of protecting these rights, *Laburnum* undoubtedly would have been decided differently by the Court. *Garner v. Teamsters Union*, 346 U. S. 485.

It is also probable that the Court would have reached a different conclusion in the *Laburnum* case had the union conduct in the case involved border line activity raising questions of national policy as to whether the activity was protected and privileged, rather than extreme violence which has been repeatedly and clearly held, both by the courts and the Board, to be unprotected and illegal. *Laburnum* presented an actual armed invasion by superior inimical forces to compel the exclusive employment of persons who were not then standing in the relationship of employees to the employer. The instant case involves at most a voluntary mass demonstration to show support of a Federally protected strike by employees seeking a contract with their employer.

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"*United Construction Workers v. Laburnum Construction Corporation*, 347 U. S. 656, 74 S. Ct. 823, relied upon by respondent, does not announce a different rule. In this case the state court was held to have jurisdiction, because the act does not provide a procedure under which the plaintiff in that action could have obtained the compensatory relief which he sought—damages for loss of profits due to interference with the performance of the plaintiff's contracts." *Mahoney v. Sailor's Union of the Pacific*, 45 W. 2d 453, 275 Pac. 2d 440, 445, cert. den. 349 U. S. 915.

See also: *McNish v. American Brass Co.*, 139 Conn. 44, 89 Atl. 2d 566, cert. den. 344 U. S. 913.

Sterling v. Local 478, Liberty Assn. of Steam and Power Pipefitters and Helpers Assn., 207 Md. 132, 113 Atl. 2d 389, cert. den. 350 U. S. 875.

The *Laburnum* decision in the light of the other pronouncements of the Court, demarks clearly the distinction between actions by an employee upon subject matter covered by Sections 7, 8 (b)(1)(A) and 8(b)(2), and actions by an employer, whose parallel rights are unprotected.

F. ASSUMING THAT THE EXTENT OF RELIEF PROVIDED BY CONGRESS IS A RELEVANT CONSIDERATION, IT WOULD APPEAR THAT THE POWER OF THE NATIONAL LABOR RELATIONS BOARD TO ENTER REMEDIAL AND REPARATION ORDERS IS COEXTENSIVE WITH ITS DISCRETION TO ACCORD SUCH RELIEF AS WILL EFFECTUATE THE POLICIES OF THE ACT.

While the National Labor Relations Board has often held that it is a violation of Section 8 (b)(1)(A) of the Act for a labor organization or its agents to interfere by mass picketing, violence, or threats of violence, with the right of an employee to work during a strike, it has held that it is without power or jurisdiction to enter an award of back pay where the wages lost by the employee were as the result of an interference with his right of ingress to his place of employment, as was contended in the instant case. *Colonial Hardwood Flooring Company, Inc.*, 84 N. L. R. B. 595; *United Mine Workers of America and West Kentucky Coal Co.*, 92 N. L. R. B. 916. This legal conclusion of the National Labor Relations Board, which has never received judicial sanction by direct review,¹⁸ was

¹⁸ Since this determination of the extent of the Board's jurisdiction and remedial power involves a question of law, rather than an exercise of administrative discretion, the interpretation placed upon the Act is open to review by the Court without any presumption in aid of its validity.

The Board is duty bound by law to find correctly and to recognize the full extent of the jurisdiction vested in it by the Statute, even though it may have a discretion as to the manner and extent of its exercise. If the

relied upon by the Supreme Court of Alabama in its original decision upon the question of Federal preemption in the instant case.

This construction of the Act by the National Labor Relations Board and by the Supreme Court of Alabama is in apparent conflict with the decisions of this Court in *Phelps-Dodge Corporation v. N. L. R. B.*, 313 U. S. 177, and *Virginia Electric and Power Co. v. N. L. R. B.*, 319 U. S. 533. In the former case the Court said:

"To differentiate between discrimination in denying employment and in terminating it, would be a differentiation not only without substance but in defiance of that against which the prohibition of discrimination is directed."

"But, we are told, this is precisely the differentiation Congress has made. It has done so, the argument runs, by not directing the Board 'to take such affirmative action as will effectuate the policies of this Act', *simpliciter*, but, instead, by empowering the Board 'to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act.' To attribute such a function to the

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law reposes discretionary authority in the Board; the Board is obligated by statute to exercise the discretion and cannot abandon this power and duty through the means of a legal construction limiting its remedial authority. *Office Employees International Union v. N. L. R. B.*, #422, May 6, 1957, — U. S. —, 77 S. Ct. 799.

In an analogous situation, where the Federal Power Commission had long disclaimed jurisdiction to establish rates on the sale of natural gas within the state of production, the Court noted that sales to interstate pipe lines had a direct and substantial effect on rates paid by ultimate consumers in other states, and that the Commission was bound to exercise its statutory jurisdiction irrespective of administrative difficulties saying that "exceptions to a primary grant of jurisdiction *** are to be strictly construed." *Phillips Petroleum Company v. Wisconsin*, 341 U. S. 672, 679.

participial phrase introduced by ‘including’ is to shrivel a versatile principle to an illustrative application. We find no justification whatever for attributing to Congress such a casuistic withdrawal of the authority, which but for the illustration, it clearly has given the Board. The word ‘including’ does not lend itself to such significance” (313 U. S. 177, 188-9).

And in the latter case the Court said:

“The declared policy of the Act in Section 1 is to prevent, by encouraging and protecting collective bargaining and full freedom of association for workers, the costly dislocation and interruption of the flow of commerce caused by unnecessary industrial strife and unrest. See *Labor Board v. Jones and Laughlin*, 301 U. S. 1. Within this limit the Board has wide discretion in ordering affirmative action; its power is not limited to the illustrative example of one type of permissible affirmative order, namely, reinstatement with or without back pay. *Phelps-Dodge Corp. v. Labor Board*, 313 U. S. 177, 187-89. The particular means by which the effects of unfair labor practices are to be expunged are matters ‘for the Board not the court to determine.’ *E. A. of M. v. Labor Board*, *supra*, at page 83; *Labor Board v. Link-Belt Co.*, *supra*, at page 600. Here the Board in the exercise of its informed discretion, has expressly determined that reimbursement in full of the check-off dues is necessary to effectuate the policies of the Act” (319 U. S. 533, 539).

The decision of the Board in *Colonial Hardwood Flooring Co., Inc.*, 84 N. L. R. B. 563, 565, upon which the Board relied for its decision in the *United Mineworkers of America* decision (92 N. L. R. B. 916) is in direct opposition to these quotations from the decision of this Court. In the *Colonial Hardwood Flooring* case the Board adopted and

followed exactly the reasoning which was repudiated by this Court in the *Phelps Dodge Corp.* decision. The Board attributed to the illustrative phrase in Section 10 (e) of the amended Act: "Provided, that back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him," an intent of Congress to limit the power of the Board. Clearly, this proviso illustrates the type of order which might be found appropriate in cases specifically involving discrimination and tenure of terms of the employment relationship between the employee and his employer, and is in no manner a limitation upon the general power of the Board "to take such affirmative action as will effectuate the policies of the Act."

In the *United Mineworkers* case, Member Reynolds, who had joined in the *Colonial Hardwood* decision, dissented and repudiated his previous opinion, stating that the only way in which the unfair labor practice—preventing an employee from working during a strike—could be remedied was by requiring the responsible union to make him whole for lost pay. Member Reynolds' dissent discusses fully the pertinent decisions of this Court and the entire legislative history of amended Section 10 (e) and is reprinted in full in Appendix "D." The legislative history, therefore, is not set forth more fully here.

In Section 1 (b) of the Labor Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C. 141 (b)), Congress made the following declaration of policy:

"It is the purpose and policy of this Act; in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, *to protect the rights*

of individual employees in their relations with labor organizations whose activities affect commerce, to define and prescribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce." (Emphasis supplied.)

This expression of policy to protect the rights of individual employees is emphasized by the legislative history of Section 10 (c), especially in House Report 245, on H. R. 3020 (80th Congress, First Session), page 42. The House Report, in commenting upon the House Bill which provided only that the Labor Board should take such affirmative action as would effectuate the policies of the Act, said:

"This Section, dealing with remedies the Board may prescribe contains these three significant changes.

"A. One, in language like that which is applicable to employers who violate Section 8 (a) authorizes the Board to order unions and their adherents who violate Section 8 (b) to cease and desist from unfair labor practices and to take such affirmative action as will effectuate the policies of the Act * * *. Under this clause the Board may also require a union to reimburse an employee whom it causes to lose pay the amount that he loses."

Cf., Senate Report 105 on S. 1126 (80th Congress First Session), p. 26.

The basic remedial power granted to the Board in Section 10 (c) of the amended Act (29 U. S. C. 160(c)) states:

"if * * * the Board shall be of the opinion that any person named in the complaint has engaged

in, or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, *and to take such affirmative action* including reinstatement of employees with or without back pay, *as will effectuate the policies of this Act.*" (Emphasis supplied.)

These italicized powers are identical to those contained in the House amendment which the House explained as giving power to make back pay orders against unions. When this basic power is construed in the light of the previous decisions of this Court, which hold that the words "including reinstatement of employees with or without back pay" are illustrative only, it is difficult not to conclude that the previous power in the Board to enter such remedial and reparatory orders as would effectuate the policies of the Act was not diminished by the amended Act but was, in fact, extended so as to authorize back pay orders against unions as well as against employers.

Section 8 (a) (1) of the Act is the counterpart of Section 8 (b) (1) where employers, instead of unions, are charged with interference with the rights of employees. Similarly, Section 8(a) (3) is the counterpart of Section 8(b) (2), for discrimination as to employment.

While holding in the *Colonial Hardwood* and *United Mineworkers* cases that it cannot award back pay against a union under Section 8(b) (1) without finding a violation of Section 8 (b) (2), yet the Board has held in at least one case that it does have the power to award back pay against an employer for a violation of Section 8 (a) (1) although specifically finding that no 8 (a) (3) discrimination by the employer was shown. *West Boylston Mfg. Co.* 87 N. L. R. B. 808 (1949). Board Member Houston, d.

rectly contrary to his opinion in the *Colonial Hardwood and United Mineworkers case*, said in concurring:

"In any event, whether the Respondent's conduct be deemed violative of Section 8 (a) (3) as well as 8 (a) (1) and (5) or, as found by the majority, only of 8 (a) (1) and (5), I would direct back pay, as well as reinstatement, for the employees whose employment was terminated as a result of the Respondent's illegal unilateral adoption of the merit rating system. Section 10 (e) of the Act gives the Board broad powers to remedy unfair labor practices. The award of back pay is not limited by the Act to those cases in which the Board has found that Section 8 (a) (3) has been violated. As stated by the Supreme Court, * * * in the nature of things Congress could not catalogue all the devices and stratagems for circumventing the policies of the Act * * *. The remedy of back pay is entrusted to the Board's discretion." *Phelps Dodge Corporation v. N. L. R. B.*, 313 U. S. 177, 194, 198. The Supreme Court has also stated that "The relief which the Statute empowers the Board to grant is to be adapted to the situation which calls for redress." *N. L. R. B. v. Mackay Radio and Telegraph Co.*, 304 U. S. 333." 87 N. L. R. B. 808, 818.

The types of orders which the Board has found appropriate to effectuate the policies of the Act have been many and varied, for example: Back pay during period of illegal lockout (*Wood Mfg. Co.*, 95 N. L. R. B. 633 (1951)); back pay during illegal layoff (*Underwood Machinery Co.*, 95 N. L. R. B. 1386 (1951)); back pay for illegal denial of employment (*Pacific American Shipowner's Assn.*, 98 N. L. R. B. 583 (1952)); back pay after strike when offer to return to work is refused (*Nashville Corp.*, 84 N. L. R. B. 1567 (1951)); restoring employees to occupancy of homes

(*Williams Lumber Co.*, 96 N. L. R. B. 635 (1951)); award of stock bonus (*United Shoe Mach. Corp., Inc.*, 96 N. L. R. B. 1309 (1951)); moving expenses (*Rome Products Co.*, 77 N. L. R. B. 1217 (1948)); refund of union dues withheld from wages (*Virginia Electric and Power Co. v. N. L. R. B.*, 319 U. S. 532)); refund of dues obtained by union threats and coercion *in violation of Section 8 (b) (1) (A)* (*Eclipse Lumber Co., Inc.*, 95 N. L. R. B. 464 (1951)).

The Act does not expressly confer power upon the Board to enter any of the above orders. In every case the remedial power invested in the Board is the same—an order that the guilty party shall "take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act." 29 U. S. C. 160 (e).¹⁹

From the foregoing, there appears to be little logical basis for assuming that the jurisdiction of the National Labor Relations Board is less exclusive where unfair labor practices under Section 8 (b) (1) are involved than where those defined by Section 8 (b) (2) are in issue, although the question has not been definitely adjudicated. It may well be, of course, that the Board's view on appropriate remedies under Section 8 (b) (1) (A) could be adopted as a matter of *discretionary policy*; but it is difficult to see why statutory *authority or jurisdiction* to award back

¹⁹ Section 10 (e) then goes on to state:

"Provided, that where an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him."

This proviso does not limit the scope of remedial orders which the Board may issue but merely points out that a union may *cause* an employee to suffer discrimination, either directly or indirectly through an employer, and that the Board *may*, in its discretion, issue its back pay order only against the party responsible for such discrimination.

pay to a coerced employee is lacking. All criteria indicate that the exclusiveness of the Board's jurisdiction over unfair labor practices and employee rights protected by Section 7 is uniform, and that the remedial powers of the Board to redress violations of Section 7 rights is exclusive.

E. g.: *Born v. Laube*, 213 F. 2d 407 (C. A. 9) (reh'ng denied 214 F. 2d 349, cert. den. 348 U. S. 855); *McNish v. American Brass Co.*, 139 Conn. 44, 89 Atl. 2d 566 (cert. den. 344 U. S. 913); *Mahoney v. Sailor's Union of the Pacific*, 45 W. 2d 453, 275 Pac. 2d 440 (Cert. den. 349 U. S. 915); and *Sterling v. Local 438, Liberty Ass'n of Steam and Power Pipefitters and Helpers Ass'n*, 207 Md. 132, 113 Atl. 2d 389 (cert. den. 350 U. S. 875).

Each of these cases was a decision that courts are without jurisdiction to entertain a suit for damages against a labor organization, brought by an employee, to recover for union interference with employment on account of non-membership in a labor organization, because the National Labor Relations Board has exclusive jurisdiction to redress the rights of the employee, and such rulings were each contrary to the conclusion reached by the Supreme Court of Alabama in the instant case.

In *Born v. Laube*, the Court of Appeals said:

"It is argued that the Board, although having authority to require the offending union to reinstate and financially to make whole the victim of the unfair labor practice, is without power to assess punitive damages; consequently, the view should be taken that Congress did not intend to preclude the victim from enforcing this private right in an action at common law. However, we think it evident that since the Act provides a procedure for redress and a corresponding remedy, both the procedure and the remedy are exclusive in the absence

of an express provision or Board delegation to the contrary. As said in *Nathanson v. N. L. R. B.*, 344 U. S. 25, 27: 'A back pay order is a reparation order designed to vindicate the public policy of the statute by making the employees whole for losses suffered on account of an unfair labor practice (citation). Congress has made the Board the only party entitled to enforce the Act.' A remark of Justice Holmes in *Charleston & Western Carolina Railway Co. v. Yarnville Furniture Company*, 237 U. S. 597, 604, though dealing with an unrelated subject, is pertinent here. 'When Congress,' he said, 'has taken the particular subject-matter in hand coincidence is as ineffective as opposition, and a state law is not to be declared a help because it attempts to go farther than Congress has seen fit to go.' (213 F. 2d 407, 410).

In *McNish v. American Brass Company*, 139 Conn. 44, 98 Atl. 2d 566, the Connecticut court pointed out that in those fields in which it was intended that the federal legislation should be operative the regulations enacted into law by Congress are exclusive and that one of the phases of labor relations affecting interstate commerce which the National Labor Relations Act does purport to cover is the matter of union unfair labor practices. The decision is, in part, as follows:

"In enacting the National Labor Relations Act of 1935, 49 Stat. 449, 29 U. S. C. §151, (1940), and the Labor Management Relations Act, 1947, known as the Taft-Hartley Act, 61 Stat. 136, 29 U. S. C. §141 (Supp. 4, 1951), Congress sought to reach only some of the aspects of the employer-employee relationship. *Bethlehem Steel Co. v. New York Labor Relations Board*, 330 U. S. 767, 773, 67 S. Ct. 1026, 91 L. ed. 1234. In those fields in which it was intended that the legislation should be operative, the regulations enacted into law by Congress

are exclusive. *Amalgamated Assn. of Employees v. Wisconsin Board*, 340 U. S. 383, 389, 71 S. Ct. 359, 95 L. ed. 364; *International Union v. O'Brien*, 339 U. S. 454, 457, 70 S. Ct. 781, 94 L. ed. 978; *La Crosse Telephone Corporation v. Wisconsin Board*, 336 U. S. 18, 24, 69 S. Ct. 379, 93 L. ed. 463; *Bethlehem Steel Co. v. New York Labor Relations Board*, *supra*; *Norris Grain Co. v. Seafarers' International Union*, 232 Minn. 91, 99, 46 N. W. 2d 94, 100; *Pittsburg Rys. Co. Employees' Case*, 357 Pa. 379, 382, 54 A. 2d 891. The confusion which would result from dual control is graphically described in the *Bethlehem Steel Co. case*, *supra* 775.

"One of the phases of this relationship which the National Labor Relations Acts do purport to cover is the matter of unfair labor practices * * *.

"The actions of the defendants set forth in the second count of the complaint in the case at bar constitute unfair labor practices under the Act. The plaintiff's remedy, therefore, lies within the exclusive jurisdiction of the National Labor Relations Board."

In the *Sterling* case (207 Md. 132, 113 Atl. 2d 389, 396), the Maryland court stated:

"Here the very rights of a worker which Congress afforded protection by the National Labor Relations Board are sought by appellant to be protected by the courts of Maryland. Congress has provided the exact type of remedy which the state could afford, that is, the Board is empowered not only to require the union to cease its unlawful activity and discrimination, but to pay the injured worker the same amount and type of compensatory damages he could recover in the state court. No question of the police power of the state is involved. It is no answer to say, as the appellant does, that the statute of limitation under the Taft-Hartley Act is six months, whereas in the state court it is

three years, or that he cannot recover punitive damages before the Board. The appellant himself has waited several years without seeking any relief from the Board. He should have applied to it as soon as his rights were affronted, and he cannot pull himself up by his boot straps by waiting several years and claiming inadequacy of remedy because of lapse of time." (Emphasis added.)

We conclude that among the various forms of relief which the Board may formulate is the award of back-pay due because of interference with employment. Congress has "prescribed (this) procedure for dealing with the consequences of (this) tortious conduct already committed." *United Construction Workers v. Laburnum Corporation*, 347 U. S. 656, 665. (Words in parenthesis supplied.)

G. THE PROTECTION OF THE RIGHT TO ENGAGE IN CONCERTED CONDUCT AND THE INTERBALANCING OF THIS RIGHT WITH THE RIGHT OF EMPLOYEES TO WORK IN THE FACE OF A STRIKE CANNOT BE ACCOMPLISHED BY A MULTIPLICITY OF PROCEDURES AND TRIBUNALS. IT WAS THE AIM OF CONGRESS TO ENTRUST THESE MATTERS TO THE NATIONAL LABOR RELATIONS BOARD WHERE THEY COULD BE REGULATED BY A SINGLE HARMONIOUS PATTERN OF RULES ADMINISTERED BY AN EXPERT AGENCY AND WHERE THEIR INTEGRITY COULD BE UNIFORMLY INSURED.

As we have already shown, the Court has uniformly held that within the realm of the subject matter entrusted to the National Labor Relations Board, the jurisdiction granted to the Board by Congress was intended to be exclusive, and that Congress intended to dispel the confusion which would result from a dispersion of authority and from multiplicity of regulation (*Garner v. Teamsters*

Union, 346 U. S. 384; Amalgamated Association of Street, Electric Railway, etc., Employees v. Wisconsin Employment Relations Board, 340 U. S. 383.

In *Amalgamated Utility Workers v. Consolidated Edison Co., 309 U. S. 261, 264*, the Court said:

"To attain its object Congress created a particular agency, the National Labor Relations Board, and established a special procedure. The aim, character and scope of that special procedure are determinative of the question now before us. Within the range of its constitutional power, Congress was entitled to determine what remedy it would provide, the way that remedy should be sought, the extent to which it should be afforded, and the means by which it should be made effective."

"Congress declared that certain labor practices should be unfair, but it prescribed a particular method by which such practices should be ascertained and prevented. By the express terms of the Act, the Board was made the exclusive agency for that purpose."²⁰

In so doing Congress had a "general intent to preempt the field" and "expressed its judgment in favor of uniformity." *Guss v. Utah Labor Relations Board, 353 U. S. 1.*

The right of employees to organize and to strike is a fundamental right. *National Labor Relations Board v. Jones and Laughlin Steel Corp., 301 U. S. 1, 33.* Not only

²⁰ The deletion from Section 10 (a) of the amended Act of the word "exclusive" was not intended to vest courts with general jurisdiction over unfair labor practices, but merely to recognize the special jurisdiction vested in courts by Section 10, Sub-Sections (j) and (l), and Sections 301 and 303 of the Act. *Amazon Cotton Mill Co. v. Textile Workers Union of America, 167 F. 2d 183 (CA-4); Guss v. Utah Labor Relations Board, 353 U. S. 1.*

is the right fundamental, but it is a right guaranteed to employees by Section 7 of the National Labor Relations Act. *Amalgamated Association of Street, Electric Railway, etc. Employees v. Wisconsin Employment Relations Board*, 340 U. S. 383, 390. The existence of a guaranteed right to engage in a lawful strike carries with it the necessary correlative guarantee that such right may be exercised free of liability in damages for economic loss proximately caused thereby to others.²¹

This right may be lost to employees just as well by subjecting their legal representatives and union to liability in damages under a multiplicity of procedures because of aid rendered to the employees as by subjecting the employees themselves to liability. To regulate the collective bargaining representative is to regulate the freedom of employees to exercise the rights guaranteed to them by Congress in Section 7. *Hill v. Florida*, 325 U. S. 538.

There was no question in this case but that the Respondent lost five weeks time from his work during a *lawful* strike, and that he incurred a consequent loss of wages. The principal factual issue was whether this loss of wages was the proximate result of the strike, which was lawful, protected activity and consequently was privileged, or was the proximate result of alleged excessive picketing in support of the strike. The Petitioners contended that the employer was caused to close its plant because so many of its employees voluntarily participated in the strike that

²¹ This right is expressed in *Restatement of Torts*, §809, as follows:

"When concerted action by workers against another causes economic loss to a third person through the effect of the action on the other, the workers are not liable for such loss if their action was not directed against the third person and is privileged as to the other against whom it was directed."

²² *Restatement of Torts*, §775, states the rule that a strike for lawful objects is protected and privileged conduct.

it would have been impossible to operate. The Petitioners further contended below that there was no showing that any work would have been available to Respondent if he had entered his place of employment, and that consequently he suffered no loss of wages as a result of excessive picketing.

Every legal Federally protected strike has as its basic purpose and objective the bringing of economic pressure to bear upon the employer and this objective, if successful, causes the operations of the employer to be suspended and incidentally causes a loss of work to employees who may wish to work. This incidental damage results from privileged conduct, however, and gives rise to no cause of action to the employees losing wages. Upholding the Federal policy of protecting legal strikes should require the person complaining of economic loss from improper conduct during a Federally privileged strike to carry a burden of proof which would convincingly demonstrate that the loss was not the result of privileged conduct.

The trial judge recognized the privileged nature of the strike and felt obligated to, and did, charge the jury upon the rights accruing to Petitioners under the National Labor Relations Act (R. 624-626, 639-641).

He also charged the jury that it would have to find that work would have been available to Respondent, notwithstanding excessive picketing, and that the loss of work resulted from no other cause, before the Respondent would be entitled to recover.²²

²² These charges were as follows.

"I charge you that unless you are reasonably satisfied from the evidence in this case that the proximate cause of plaintiff's inability to work at the Decatur plant of Calumet and Hecla Consolidated

Thereby Federal rights, entrusted by Congress to the National Labor Relations Board, were placed into the hands of a state court jury for interpretation and protection. Furthermore, in their very expression the rights

(Continued from preceding page)

Copper Company (Wolverine Tube Division) during the period from July 18, 1951 to August 22, 1951, was that a picket line was conducted by the defendants in a manner which by force and violence, or threats of force and violence prevented the plaintiff from entering the plant, and unless you are also reasonably satisfied from the evidence that work would have been available to the plaintiff in the plant during said period, except for picketing in such manner, you should not return a verdict for the plaintiff" (R. 639).

"I charge you that if you are reasonably satisfied that the plant of Calumet and Hecla Consolidated Copper Company (Wolverine Tube Division) was closed by its management to work by hourly paid employees during the period from July 18, 1951 to August 22, 1951, for any cause other than the manner in which picketing was conducted by defendants, the acts complained of by the plaintiff, if said acts occurred, would not be the natural and proximate cause of any loss of wages to the plaintiff" (R. 641).

The following charge was requested but refused:

"I charge you that employees have the right to join trade, or labor unions and to organize themselves, in order to better their terms and conditions of employment, the right to select for themselves a representative, such as a labor union, to deal for them with their employer, the right to strike for legitimate and lawful objects, and the right to picket peacefully in furtherance of their strike and to persuade peaceably others to join them in their endeavor. Where a strike of employees is directed against their employer in an effort to obtain legitimate and lawful objects, they are not liable to their employer for economic loss sustained as a result of peaceful picketing in furtherance of said strike. Neither are the employees liable to their fellow employees for wages lost because of a strike, unless it is shown that the strike was unlawfully directed against the fellow employees, or unless it is shown that the loss of wages was proximately caused by unlawful conduct in furtherance of the strike. It is not contended by the plaintiff in this case that the strike was unlawfully directed against the plaintiff" (R. 641)..

Although this charge was refused, the Court charged the same general subject-matter in his oral charge to the jury, and the refusal, therefore, probably was not reversible error (R. 624-626).

were buried beneath the cumbersome and technical language required by common law procedure, and were confused by the giving of Respondent's requested Charge #9, which erroneously authorized the jury to return a verdict upon a bare finding that he was unable to enter his place of employment, irrespective of whether work would have been available during the strike (See footnote 8, p. 14, *supra*).

The jury returned a verdict for Respondent in the amount of \$10,000 (R. 12), which necessarily means that in excess of \$9,500 of the verdict was a regulatory or punitive award, because he was not damaged in his person or property, and the greatest actual damage he could have sustained was the loss of approximately \$450 for wages during the period of the strike.

There was no evidence that work would have been available to Respondent had he reported to his work on the morning the strike began. We earnestly believe that the evidence demanded a conclusion that so many employees were voluntarily supporting the strike at its inception that the employer could not have operated its plant and that the employer, knowing this, decided, before the picket line was established, not to attempt to operate.²³

²³ The Supreme Court of Alabama in upholding the verdict, did not explain what evidence was introduced by the plaintiff which would justify a verdict for him and the only finding it made, with reference to the evidence as to the cause of the plant closing, was the statement that the Industrial and Public Relations Director for the plant denied telling Union officials at a pre-strike meeting that the plant would be closed to hourly rated employees during the strike (R. 655-656). The only way in which the Supreme Court of Alabama could have reached its conclusion was to indulge in an inference, from the fact that plaintiff appeared at the plant gate to enter his place of employment on the morning the strike began and was unable to do so, that had he entered his place of employment he would have been afforded work. There is no testimony or evidence in the record on which such a finding could be based and the Supreme Court of Alabama specifically failed to make such a finding.

We do not know what conclusions the National Labor Relations Board would have drawn from the facts; but we do not believe it would have found a loss of work resulting from the picketing or that it would have found that the right to engage in a lawful and Federally protected strike, free from liability in damages, had been waived by the demonstration of support and normal exuberance of strikers revealed by the evidence in this case. *N. L. R. B. v. Elkland Leather Co.*, 114 F. 2d 221 (C. A. 3, 1940); *N. L. R. B. Remington-Rand*, 94 F. 2d 862 (C. A. 2, 1938); *Milkwagon Drivers Union v. Meadowmoor Dairies, Inc.*, 312 U. S. 287.

We do know, however, that these are considerations of national policy entrusted by Congress to the National Labor Relations Board and that "Congress did not leave it to state labor agencies, to state courts or to this Court to decide how inconsistent with federal policy state law must be." *Amalgamated Meatcutters v. Fairlawn Meat Inc.*, 353 U. S. 20, —.

If there is a federally protected right to strike, such right cannot exist where it is to be subjected to regulation by the opinions and prejudices of jurors in the thousands of state trial courts throughout the nation. Similarly, if there is a right to refrain from striking—that is, to work in the face of a strike—such right cannot be uniformly protected by the state trial courts.

These are not rights uniformly recognized by the more than 100,000 communities of every size and type in every state of every community in the nation, as are questions of criminal law and negligence. In one section of the country the predominant public opinion is overwhelmingly in favor of the striking employee and his rights. In such a community an employee, whose right to work during a strike has been interfered with, cannot be protected by

jurors who believe that a "scab" is the equivalent of a traitor to his nation, his fellowman and to himself.

In other communities the available jurors know little, if anything, of the trials and pressures which confront the industrial worker in his struggle for existence, and have no sympathy or understanding for the lot of industrial employees who conceretedly withdraw their services from their employer. In these communities it cannot be expected that a trial jury, who believe all union adherents to be communists, can follow with discernment the niceties of factual causation in the question of whether a strike or a picket line was the proximate cause of a loss of wages to an employee.

Thus, the integrity of the right to strike and the inter-balancing of this right with the right to work in the face of a strike are matters which can only be protected and fairly regulated through the dispassionate investigation of an impartial and expert agency established for this precise purpose.

If these rights cannot be expected to receive uniform protection as a result of multiplicity of tribunals and diversity of procedures before the state and federal courts of equity (*Garner v. Teamsters Union*, 346 U. S. 485; *Amazon Cotton Mill Co. v. Textile Workers Union of America*, 167 F. 2d 183), then it could not be hoped that the rights would receive any semblance of general equality if subjected to thousands of varying interpretations by a myriad of state trial courts and juries.

The very basis of the policy of the National Labor Relations Act is that employees shall be free to engage in concerted activities free from financial responsibility. To hold unions financially liable because of their having rendered aid to employees in the exercise of their lawful

protected rights is to strike at the very basis of freedom of association and of collective bargaining. The collective bargaining process and the administration of contractual rights of employees is dependent upon the financial integrity of unions. No weapon is more effective to disrupt and block the policy of free collective bargaining expressed by Congress in its labor relations statutes than the power to bankrupt the representatives of employees, especially local unions, under a thousand different authorities and rules varying from those of the National Labor Relations Board which Congress intended should be exclusive.

The power to impose staggering punitive damages upon labor activity in interstate commerce is the power to prohibit. Punitive damages in Alabama, as in most states, are awarded, not as a matter of private right, but in the interest of the state, as punishment to deter the wrongdoer and others from similar acts. The trial court so charged the jury in this case (R. 631-634, 636-637), as is authorized by the law of the state. E. g. *Meighan v. Birmingham Terminal*, 165 Ala. 591, 51 So. 775, 777, where the court said:

"Such damages (exemplary) are assessed in proper cases in the interest of the state. They are awarded not for the compensation of the plaintiff, but as a warning to other wrongdoers."

The state, under the guise of the police power, therefore, can delegate to its juries the authority to determine what labor activity in interstate commerce is in the public interest and to regulate the area within which concerted activity is permissible and the manner in which it can be exercised. Such is exactly what the State of Alabama is doing in this case.²⁴

²⁴ See footnote 3, page 5, *supra*, and Appendix "B".

The rising flood of damage suit litigation of this character which labor unions are being required to defend is as effective in thwarting the national policy and in invading the authority delegated to the National Labor Relations Board as would be direct conflicting and prohibitory legislation.

This is not to say that violent picketing, threatening of employees, obstructing streets and highway, and picketing of homes are matters which the state may not prohibit in the exercise of its police power in an emergency. A state court of equity, under the rules established by this Court in *Milkwagon Drivers Union v. Meadowmoor Dairies*, 312 U. S. 287, 296, can prohibit excessive conduct which breaches the public peace and order without reaching into the field of interbalancing the exercise of rights protected by Section 7, which field was placed by Congress into the hands of the Board.

The problem of filtering from the facts the answer to questions of such complexity, that is whether or not the bounds of protected activity have been exceeded, and if so, have they caused financial loss to employees, can best be left to the skilled and professional discernment of the National Labor Relations Board in its development of substantive rules of permissible and prohibited conduct in labor controversies.

"In numberless instances, the law warrants the intentional infliction of temporal damage because it regards it as justified. It is on the question of what shall amount to justification and more especially, on the nature of the considerations which really determine or ought to determine the answer to that question, that judicial reasoning seems to me often to be inadequate. The true grounds of decision are considerations of policy and of social advantage, and it is vain to suppose that solutions

can be attained merely by logic and the general propositions of law which nobody disputes. Propositions as to public policy rarely are unanimously accepted, and still more rarely, if ever, are capable of unanswerable proof. They require a special training to enable anyone even to form an intelligent opinion about them." Holmes, J., dissenting in *Vejelahn v. Guntner*, 167 Mass. 92, 105-6, 44 N. E. 1077.

CONCLUSION

For the reasons stated, we urge that the Supreme Court should find that the court of the State of Alabama was without jurisdiction to entertain the suit of an employee to recover damages for alleged interference with his right to work during a lawful strike in an industry affecting interstate commerce, subject matter as to which jurisdiction has been granted by Congress to the National Labor Relations Board. The issues which were submitted to the jury under the charge of the court and the evidence in this case graphically demonstrate that the state court jury in this case was in fact adjudicating matters of Federal right regulated by the National Labor Relations Act, as amended. Congress' determination in favor of uniformity

cannot help but be thwarted if such an adjudication by state court juries is permissible.

Respectfully submitted,

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FILED

OCT 1 1957

JOHN T. PEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. [REDACTED] 21

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AIRCRAFT AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW-CIO),

An Unincorporated Labor Organization,
and MICHAEL VOLK, An Individual,
Petitioners,

vs.
PAUL S. RUSSELL,
Respondent

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF ALABAMA

PETITIONERS' APPENDICES

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1956

—♦—
No. 427
—♦—

**INTERNATIONAL UNION, UNITED AUTOMOBILE,
AIRCRAFT AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW-CIO),**

An Unincorporated Labor Organization,
and MICHAEL VOLK, An Individual,
Petitioners,

vs.
PAUL S. RUSSELL,
Respondent

—♦—
**ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF ALABAMA**
—♦—

PETITIONERS' APPENDICES

—♦—
APPENDIX A

—♦—
Part A

—♦—
CONSTITUTIONAL PROVISIONS INVOLVED

—♦—
Constitution of the United States:

Art. 1, Sec. 8, Clauses (3) and (18):

Art. VI, Clause (2):

“Art. I; See. 8. (Powers of Congress.) The Congress
shall have Power—

"(3). To regulate commerce with foreign nations; and among the several States, and with the Indian tribes.

• • •

"(18). To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

"Art. VI. Clause 2. Supreme Law.—

"(2). This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Part B
STATUTES INVOLVED

Labor Management Relations Act, 1947,
and

National Labor Relations Act, as Amended
61 Stat. 140 ff, 29 U. S. C.

Section 141 (b), Section 157, Section 158 (b) (1) and (2), Section 160 (a), (e), and (j), Section 163, Section 185 (a), Section 187 (b):

"See. 141 (b). * * *

"It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their rela-

tions affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are injurious to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce."

"See, 157. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3)."

"See, 158 (b). It shall be an unfair labor practice for a labor organization or its agents—

"(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or, (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

"(2) to cause or attempt to cause an employer to discriminate against an employee in violation of sub-section (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;"

"Sec. 160:

"(a) The Board is empowered, as hereinafter provided to prevent any person from engaging in any unfair labor practice (listed in Section (8)), affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: Provided, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce; unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provisions of this Act or has received a construction inconsistent therewith.

* * *

"(c) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: Provided, That where an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him: And provided further, That in determining whether a complaint shall issue alleging a violation of section 8 (a) (1) or section 8 (a) (2), and in deciding such cases, the same regulations and rules of decision shall apply irrespective of whether or not the labor organization affected is affiliated with a labor or-

ganization national or international in scope. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon the preponderance of the testimony taken the Board shall not be of the opinion that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint. No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause. In case the evidence is presented before a member of the Board, or before an examiner or examiners thereof, such member, or such examiner or examiners, as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed report, together with a recommended order, which shall be filed with the Board, and if no exceptions are filed within twenty days after service thereof upon such parties, or within such further period as the Board may authorize, such recommended order shall become the order of the Board and become effective as therein prescribed.

* * *

"(j) The Board shall have power, upon issuance of a complaint as provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any district court of the United States (including the District Court of the United States for the District of Columbia), within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper."

"See 163. Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to

strike, or to affect the limitations or qualifications on that right."

• • *

"See 185 (a). Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

• • *

"See 187 (b). Whoever shall be injured in his business or property by reason of any violation of subsection (a) [violations of 29 U. S. C. 158 (b) (4)] may sue therefor in any district court of the United States subject to the limitations and provisions of section 301 hereof without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit."

APPENDIX B

TABLE OF 89 DAMAGE SUITS FOR ALLEGED INTERFERENCE WITH THE RIGHT OF EMPLOYEES TO WORK PENDING AGAINST UNIONS IN ALABAMA

The following is a partial list of damage suits pending against unions in the State of Alabama alone. No attempt has been made to gather cases from other states or to exhaust all cases pending in Alabama. Decision and further proceedings in all of these cases, except the last twenty-three, are being held in abeyance pending decision by the Court of the Russell case. Unless otherwise indicated the sole basis of each of the listed actions is an alleged interference by concerted activity with the right of employees to work and no property damages or personal injuries are alleged. Each action claims punitive damages.

1. *Burl McLemore v. United Automobile, Aircraft and Agricultural Implement Workers of America, AFL-CIO, et al.*, #6150 in the Circuit Court of Morgan County, claimed \$50,000, verdict and judgment of \$8,000 reversed for improper argument of plaintiff's counsel.
2. *James W. Thompson v. Same*, #6151, in Circuit Court of Morgan County, claimed \$50,000, appeal from \$10,000 verdict and judgment pending in Supreme Court of Alabama.
3. *N. A. Palmer v. Same*, #6152, in the Circuit Court of Morgan County, claimed \$50,000, appeal from \$18,450 verdict and judgment pending in Supreme Court of Alabama.

8a *Table of Damage Suits Pending in State Courts*

4. *Lloyd E. McAbbee v. Same*, #6153 in Circuit Court of Morgan County, claims \$50,000.
5. *Tommie F. Breeding v. Same*, #6154 in Circuit Court of Morgan County, claims \$50,000.
6. *David G. Puckett v. Same*, #6155 in Circuit Court of Morgan County, claims \$50,000.
7. *Comer T. Jenkins v. Same*, #6156 in Circuit Court of Morgan County, claims \$50,000.
8. *Joseph E. Richardson v. Same*, #6157 in Circuit Court of Morgan County, claims \$50,000.
9. *Cois E. Woodard v. Same*, #6158 in Circuit Court of Morgan County, claims \$50,000.
10. *Millard E. Green v. Same*, #6159, in Circuit Court of Morgan County, claims \$50,000.
11. *James C. Hughes v. Same*, #6160 in Circuit Court of Morgan County, claims \$50,000.
12. *James C. Dillehay v. Same*, #6161, in Circuit Court of Morgan County, claims \$50,000.
13. *James T. Kirby v. Same*, #6162, in Circuit Court of Morgan County, claims \$50,000.
14. *Cloyce Frost v. Same*, #6163, in Circuit Court of Morgan County, claims \$50,000.
15. *E. L. Thompson, Jr. v. Same*, #6164, in Circuit Court of Morgan County, claims \$50,000.
16. *J. A. Glasscock, Jr. v. Same*, #6165, in Circuit Court of Morgan County, claims \$50,000.
17. *Hoyt T. Penn v. Same*, #6166, in Circuit Court of Morgan County, claims \$50,000.
18. *Spencer Weinman v. Same*, #6167, in Circuit Court of Morgan County, claims \$50,000.
19. *Joseph J. Hightower v. Same*, #6168, in Circuit Court of Morgan County, claims \$50,000.

Table of Damage Suits Pending in State Courts 9a

20. *A. A. Kilpatrick v. Same*, #6169, in Circuit Court of Morgan County, claims \$50,000.
21. *Charles E. Kirk v. Same*, #6170, in Circuit Court of Morgan County, claims \$50,000. Plaintiff now deceased.
22. *Richard W. Penn v. Same*, #6171, in Circuit Court of Morgan County, claims \$50,000.
23. *Robert C. Russell v. Same*, #6172, in Circuit Court of Morgan County, claims \$50,000.
24. *T. H. Abercrombie v. Same*, #6173, in Circuit Court of Morgan County, claims \$50,000.
25. *James H. Tanner v. Same*, #6174, in Circuit Court of Morgan County, claims \$50,000.
26. *Charles E. Carroll v. Same*, #6175, in Circuit Court of Morgan County, claims \$50,000.
27. *Ordell T. Garvey v. Same*, #6176, in Circuit Court of Morgan County, claims \$50,000.
28. *A. R. Barran v. Same*, #6177, in Circuit Court of Morgan County, claims \$50,000.
29. *Russell L. Woodard v. Same*, #6178, in Circuit Court of Morgan County, claims \$50,000.
30. *Willie J. Hill v. Textile Workers Union of America, AFL-CIO, et al.*, #6328, in Circuit Court of Madison County, claims \$10,000.
31. *Grace L. McCoy v. Same*, #6329, in Circuit Court of Madison County, claims \$10,000.
32. *Claude Mahathay v. Same*, #6330, in Circuit Court of Madison County, claims \$10,000.
33. *Ruby Carroll v. Same*, #6331, in Circuit Court of Madison County, claims \$10,000.
34. *Mamie L. Schneltzer v. Same*, #6332, in Circuit Court of Madison County, claims \$10,000.
35. *William T. Schneltzer v. Same*, #6333, in Circuit Court of Madison County, claims \$10,000.

10a *Table of Damage Suits Pending in State Courts*

36. *Janet Parker v. Same*, #6334, in Circuit Court of Madison County, claims \$10,000.
37. *Sam Adkins v. Same*, #6335, in Circuit Court of Madison County, claims \$10,000.
38. *Frank Brown v. Same*, #6336, in Circuit Court of Madison County, claims \$10,000.
39. *Albert R. Tanner v. Same*, #6346, in Circuit Court of Madison County, claims \$10,000.
40. *Pauline McDougal v. Same*, #6347, in Circuit Court of Madison County, claims \$10,000.
41. *Clarsie J. Ikard v. Same*, #6352, in Circuit Court of Madison County, claims \$10,000.
42. *James A. Lang v. Same*, #6353, in Circuit Court of Madison County, claims \$10,000.
43. *Billy M. Lang v. Same*, #6354, in Circuit Court of Madison County, claims \$10,000.
44. *Carl S. Bowen v. Same*, #6364, in Circuit Court of Madison County, claims \$10,000.
45. *Frank Wilson Lang v. Same*, #6365 in Circuit Court of Madison County, claims \$10,000.
46. *Ruby W. Bowen v. Same*, #6366, in Circuit Court of Madison County, claims \$10,000.
47. *Elizabeth I. Walker v. Same*, #6370, in Circuit Court of Madison County, claims \$10,000.
48. *John W. Walker v. Same*, #6399, in Circuit Court of Madison County, claims \$10,000.
49. *William Arthur Taylor v. International Brotherhood of Teamsters, AFL-CIO, et al.*, #1243, in the Circuit Court of Calhoun County, claims \$50,000 for interference with work. Also alleges a physical assault.
50. *J. M. Field v. Same*, #1246 in Circuit Court of Calhoun County, claims \$10,000.

Table of Damage Suits Pending in State Courts 11a

51. *E. H. Heferly v. Same*, #1247 in Circuit Court of Calhoun County, claims \$10,000.
52. *James C. Johnson v. Same*, #1633 in Circuit Court of Calhoun County, claims \$50,000 for interference with work. Also alleges a physical assault.
53. *Dewitt Doss v. Same*, #1634 in Circuit Court of Calhoun County, claims \$50,000 for interference with work. Also alleges a physical assault.
54. *Don S. Eldridge v. International Association of Machinists, AFL-CIO, et al.*, #9965 in the Circuit Court of Talladega County. Claims \$25,000 punitive damages for interference with right to work during five days. Also alleges a several claim of \$500 for damages to an automobile.
55. *H. D. Mitchell v. Same*, #9966 in the Circuit Court of Talladega County. Claims \$25,000. Identical to above.
56. *Joe E. Lucia v. Same*, #9967 in the Circuit Court of Talladega County. Claims \$25,000. Identical to above.
57. *James T. Tyler v. Same*, #9968 in the Circuit Court of Talladega County. Claims \$25,000. Identical to the above.
58. *Claude Haga v. Same*, #9969 in the Circuit Court of Talladega County. Claims \$25,000. Identical to above.
59. *W. M. Sirley v. Same*, #9970 in the Circuit Court of Talladega County. Claims \$25,000. Identical to above.
60. *George Ratliff v. Same*, #9971 in the Circuit Court of Talladega County. Claims \$25,000. Identical to the above.
61. *H. W. Golden v. Same*, #9972, in the Circuit Court of Talladega County. Claims \$25,000. Identical to above.

12a *Table of Damage Suits Pending in State Courts*

62. *W. O. Hurd v. Same*, #9973 in the Circuit Court of Talladega County. Claims \$25,000. Identical to the above.
63. *T. D. Newman v. Same*, #9974, in the Circuit Court of Talladega County. Claims \$25,000. Identical to above.
64. *James F. Bridges v. Same*, #9975 in the Circuit Court of Talladega County. Claims \$25,000. Identical to the above.
65. *Sam S. Bates v. Same*, #9976 in the Circuit Court of Talladega County. Claims \$25,000. Identical to above.
66. *George Powell v. Same*, #9977, in the Circuit Court of Talladega County. Claims \$25,000. Identical to above.
- 67-89. *Clifford P. Hargrove, Sam L. Manley, et al. v. United Steelworkers of America, AFL-CIO, et al.*, in Equity in the Morgan County Court for Morgan County, appeal pending in Supreme Court of Alabama, 8th Division 696. Suit by 23 individuals for injunction and for damages for interference with right to work during a strike. No physical injury to person or property involved. Norman W. Harris, Attorney for plaintiffs.

APPENDIX C

BRIEF OF THE EVIDENCE PRESENTED UPON THE TRIAL

A. Events Prior to Beginning of Strike

Following certification (R. 132-139) of the Union as the representative of the hourly employees of Calumet and Hecla, meetings were held from May 21, 1951 until July 17, 1951, several times each week in an attempt to reach agreement upon a collective bargaining contract (R. 503). Frank W. Oakes, Personnel and Industrial Relations Manager was the spokesman for the Company in these meetings. The major issue in the negotiations was the Union's demand for arbitration in the grievance procedure to settle disputes (R. 504). The Company took the position that it would not agree to arbitration of contractual disputes under any circumstances (R. 398).

The evidence demonstrates that the Calumet and Hecla Decatur plant is a continuous processing line operation, all of the departments of which, both maintenance and production, are highly integrated and interdependent (R. 45-46, 56, 248-249, 340).

In two meetings of employees on July 17, 1951, employees estimated at over four hundred by various of the witnesses (R. 285, 485, 489, 504, 507, 546), out of the employer's total three-shift complement of slightly over five hundred hourly paid employees (R. 34), voted almost unanimously to go on strike (R. 505, 507). Following the first meeting of employees, a meeting was held between the representatives of the Company and the representatives of the employees at three o'clock, P. M. (R. 505-506). The employees' representatives advised the Company representatives, who included Mr. Oakes, Mr. Kromer and

Mr. Robson, that the second shift employees had voted to strike and that a meeting was to be held later of the employees of the first and third shifts who would probably vote likewise, in which event a picket line would be established the next morning (R. 286, 287, 486, 487, 506).

The Union representatives asked Mr. Oakes if the Company needed any maintenance men or key men to protect the machinery and equipment of the plant for safety or underwriting reasons, to which Oakes replied: "No, we won't need any hourly rated employees. The plant will be closed to all hourly employees and our salaried employees are fully capable of taking care of any situation that might arise inside the plant" (R. 287). The reason given by Oakes was that hourly employees had to work together after the strike and the Company did not want any hard feelings, therefore, the Company was going to close the plant down to all hourly employees (R. 487, 506). Mr. Robson, the Plant Engineer, advised the meeting that employees of an outside contractor engaged in construction work on the premises would not enter the plant during the strike (R. 487, 506).

Thereafter at a meeting of the first and third shifts, at which approximately two hundred and fifty employees were in attendance (R. 489, 507) these matters were reported to the employees. The employees voted unanimously to strike and Union Regional Director Starling made a talk to the employees assembled, and advised them that they must conduct themselves as gentlemen on the picket line, and that community support of the strike was important (R. 398-399, 401). Starling advised both meetings that no drinking would be permitted at or near the picket line (R. 399, 401). Starling urged all employees to be present at the picket line the following morning so that picket captains could be selected and picketing shifts and assignments worked out, and so that it would be unnecessary for all of the employees to come to the picket line except upon scheduled occasions (R. 401). Starling testified that the arrangement of picket schedules in a strike of so many employees was a difficult job which required about a week to complete (R. 407-408), and that

after the schedules were arranged fewer pickets were present on the picket line than previously (R. 402).

These facts were testified to by five members of the employee's negotiating committee and by Mr. Starling. Mr. Frank W. Oakes, Industrial Relations Manager for the Employer, testified that the Union committee advised him management and salaried employees would be admitted to the plant in the event of the strike, and that Union Representative Volk (Petitioner) stated: "At least at the start," and that the Union would keep the strike on a high plane (R. 599). Mr. Oakes stated that the Company was not advised as to the exact time at which the strike would begin (R. 599). Oakes did not deny that the Company refused the offer of hourly employees to work, but stated that he did not use the specific language attributed to him by some of the Union committee that "the company would lock its gates against hourly employees and not admit them to the plant" (R. 599).

B. Events of July 18, 1951 and the Plaintiff's Evidence

Respondent Russell was an electrician hired and paid at an hourly rate of \$1.75 (R. 18). He did not work from the beginning of the strike, July 18, 1951, until August 22, 1951, when the plant reopened, a period of about five weeks (R. 36).

Ralph Webster, an employee, testified for the defendants that on the afternoon of July 17 he advised the plaintiff that the second shift had voted to strike the following morning and that Mr. Oakes had refused an offer of standby personnel and had told the employees' committee that the Company was going to close the gates to hourly employees, but that salaried employees would work (R. 526-527). Russell replied to him that the employees would never get a contract (R. 527). Employee Webster arrived at the picket line about six a. m. on the morning of July 18, when the strike was to begin and was requested by the police to help keep the road clear because of fire hazard. Webster stationed himself at the intersection of Grant and Railroad Avenues some distance from the picket line and re-

quested automobiles as they arrived to please park off the pavement, and advised the employees that "the gate was closed to hourly rated employees, but the salaried employees could go through the picket line if they would stop and identify themselves" (R. 532-533). Russell arrived and was spoken to by Webster. Webster testified that he told Russell: "Paul, we have got a picket line up like I told you we would have. The plant is closed to hourly rated employees and if you are going to park please park off the highway" (R. 534).

Russell testified that Webster said to him: "You might as well go on home today; we don't need you today. You can't go in" (R. 23).

Both Webster and Russell testified that Russell replied: "Go to hell." Then he drove on toward the picket line (R. 23, 534).

Employee Howard Hovis (defendant below) spoke to Russell some two hundred yards from the plant entrance, but Russell ignored his signal and continued driving toward the entrance (R. 24). About fifty yards further on at a railroad crossing (R. 25) [See Plaintiff's Exhibits 1, 2 and 3 photographs identified (R. 20-21) and admitted in evidence (R. 22)] twenty-five or thirty pickets were walking in a circle across the street (R. 26). The public street ends at this point and a sign says: "End of Public Street—Private Property." A Company owned road continues on to the plant gates (R. 21).

Russell testified that when he got to within twenty or thirty feet of the picket line he could feel "some drag on his car" and stopped (R. 27); that a man who later identified himself as Regional Director of the Union, asked him if he was hourly or salaried, to which Russell replied: "What difference does it make?" (R. 25). The man replied that if Russell was salaried he could go in and that if he was hourly he could not (R. 25). According to Russell, Howard Hovis said: "Paul Russell, I knew you would be one of the kind that would try to cross this picket line" (R. 72), and that the first man told him: "You should have more respect for your fellow workers than to try to break through a picket line" (R. 28). Russell testified that

when he first arrived cries came from a group near the picket line: "He is just a red apple electrician. He can't get in" (R. 30). Russell estimated that there were about fifty people on the left hand side of the road and about one hundred fifty on the right hand side of the road in addition to the pickets, and stated that persons from the larger group exchanged places with pickets from time to time (R. 29, 30). While Russell was stopped near the picket line several cars passed on into the plant. A bus came up behind his car and the Union official advised Russell that he was blocking traffic and that he would have to move, to which Russell replied that he had as much right to be in the street as they had, and that if pickets would open up in front nobody would be blocking traffic, and Russell refused to move his automobile (R. 31). The Union official motioned for the bus to pull around Russell and it entered through the picket line. Russell started his car forward behind the bus and the picket line closed back in front of him and Russell stopped his automobile. At this time Russell testified cries came from unidentified persons in the vicinity as follows: "He's going to try to get through." "Looks like we are going to have to turn him over to get rid of him." "Turn him over" (R. 31). Some one in the assembled group said: "Shut up" (R. 554). Russell remained in his car for an hour and a half or two hours until about 9:45 when he backed his car out and drove home (R. 32). His car was not damaged and he was not attacked or touched by anyone (R. 81-82).

Union Regional Director Starling testified that he talked to Russell after Russell had been stopped in his automobile at the picket line for a considerable period of time, and that he advised Russell that the Union had met with the Company the day before and had been advised by the Company that if and when the strike was called that the plant would be closed to all hourly rated employees (R. 403). Starling stated that he told Russell that he, being a worker in the plant, should support the Union's demands in the dispute and that he hoped he would (R. 403-404).

The plaintiff placed on the witness stand twenty-three employees who testified that they came to the plant on the morning of July 18, 1951.¹ These twenty-three employees testified that fifteen other employees accompanied them. Of the thirty-eight employees, twenty-six brought their lunch with them. Of the thirty-eight, most were shown to have knowledge when they left home that the picket line would be established on that morning. Of the twenty-three witnesses, nine testified that they were plaintiffs in cases similar to that of the Respondent Russell.² All of these employees were shown to have approached only to within from fifty to two hundred feet of the picket line. Only one, Burl McLemore, was shown to have made any effort to cross the picket line, and most were shown to have parked their cars with no apparent thought of attempting to cross the picket line.

Burl McLemore testified that he approached to within a few feet of the picket line, which did not open for him to pass. Pete Runager, a member of the employees' negotiating committee, told him: "Mac, we don't want to have no trouble this morning. The best thing for you to do is back up and turn around. You are not going to work this morning." Following which McLemore backed his car around and got out of the car and attempted to walk around the picket line, when Runager again interceded, saying: "I don't want to have any trouble with you this morning." To which McLemore replied that his coveralls got awfully wet on the preceding day and that he feared they would

¹ Burl McLemore (R. 92); A. M. Huskey (R. 186); Clifford Carnell (R. 188); Kenneth Johnson (R. 191); G. W. Pepper (R. 194); M. D. Whitworth (R. 198); Lloyd H. Barnes (R. 201); James D. Bagwell (R. 206); James Dillehay (R. 207); Roy D. Free (R. 208); A. M. Howell (R. 209); James C. Hughes (R. 211); Comer Junkins (R. 212); James Kirby (R. 216); N. A. Palmer (R. 219); D. E. Taylor (R. 221); James W. Thompson (R. 224); Thomas E. Todd (R. 226); Joseph E. Richardson (R. 231); Bruce Ross (R. 234)); Harold Whitmire (R. 235); Jackson Waldrop (R. 236); C. E. Woodard (R. 238).

² Burl McLemore, James Dillehay, James C. Hughes, Comer Junkins, James Kirby, N. A. Palmer, James W. Thompson, Joseph E. Richardson and C. E. Woodard.

ruin, and Runager stated: "Quick as we get organized I will call you and let you go through and get them" (R. 94-95). On the following Friday, July 20, 1951, Runager did call McLemore as promised (R. 97).

William D. Schelbe, a management employee of the Company, testified that when he refused to show his identification card in the vicinity of the picket line, some unidentified person threatened to turn his ear over, following which he showed his management identification card and was admitted to the plant (R. 158-160). When Schelbe entered the plant he was told by Mr. Oakes that there was an agreement between the Company and the Union that management representatives would show their management identification cards at the picket line and be admitted (R. 161).

N. F. Webster, a plant guard, testified that he was on duty on the morning the strike began and that he did not receive any orders or instructions not to admit employees to the plant (R. 276-277). Webster testified that before the strike, when the Company planned a shut-down of the plant, or a cessation or stoppage of work, it was the custom of the Company to post a notice several days in advance announcing the shut-down on the Company bulletin Board and that on the occasion of the strike no notice was posted (R. 277).

C. Admissions of Plaintiff and Defendants' Evidence

At the beginning of the strike over four hundred of the five hundred odd hourly employees of the Company belonged to the Union (R. 305, 322). At the beginning of the strike nearly all of these participated in picketing and drew strike benefits (R. 122).

On the morning of July 18, when the strike began, Frank W. Oakes, Industrial Relations Manager stopped at the picket line about 7:30 a. m. (before the plaintiff arrived) and had a conversation with one of the Union officials (R. 509). M. E. Duncan, Howard Hovis and Hoyt Grizzard testified for the defendants that this conversation was had

with M. E. Duncan (R. 360, 493, 509). Mr. Oakes testified that it was had with Mike Volk (Petitioner) (R. 605). Oakes showed his management identification card to Volk, or Duncan, and told him that all salaried employees of the Company would have a similar card on which the numbers would be between two thousand and four thousand. Mr. Oakes advised that this was the way in which salaried employees could be identified at the picket line (R. 493, 509). This message was passed on to the striking employees (R. 493). On this occasion Oakes stated that he appreciated the picket line being orderly and hoped that it would continue (R. 493, 509).

W. D. Schelbe and Jerry Comer, Management officials, testified that Mr. Oakes instructed them to show their cards at the picket line (R. 161-162, 183), and Schelbe stated that Oakes advised him of an agreement between the Company and the Union to this effect (R. 161).

A. J. Babis, Company foreman, testified that it was entirely possible that he issued an instruction to employees under his supervision that hourly employees would not work during the strike and that they would not be admitted to the plant (R. 270). He testified as follows:

"Q. Did Oakes or other top officials of the Company advise you of the agreement that the Company made with the Union on July 17 that the plant would be closed for the duration of the strike to all hourly paid employees?

A. That the plant would be closed—the terminology I am not sure" (R. 272).

* * *

"Q. I will ask you the question again; were you advised of an agreement between the Union committee and the Company that the Company would remain closed for the duration of the strike to all hourly paid employees?"

A. I was told there would not be any work because of a discussion between the Company and the Union" (R. 273).

At 7:30 a.m. on the morning of July 18 the Company stopped placing copper billets in the furnace, which was customary when the plant was preparing to close down (R. 340-341). The next shift of employees was not due to arrive until 8 a.m. C. E. Woodard, extrusion press operator, came around and asked helpers on the press if they would stay past their regular quitting time (8 o'clock, a.m.) and finish extruding the billets which were left in the furnace. Employees are asked to "stay over" and finish extruding billets only when the plant operations were being closed down (R. 341). The employees did not stay (R. 343-344). When they left at 8 o'clock a.m. the furnace was approximately half full of heated billets (R. 343). They were extruded by supervisory personnel (R. 250).

Marvin Garth and James H. Burks, janitors, testified that their foreman advised them at 7:50 on the morning of July 18 that they should go home because the plant was going to close down. These employees left the plant about four hours before their regular quitting time (R. 332, 350). These instructions to the janitors were denied by Howard Hughes, their foreman (R. 613).

W. A. Bowling testified that about 6 o'clock, a.m. the morning the strike began he was advised by his foreman that "the gates are going to be locked until this thing is settled" (R. 356).

Millwright foreman, Norman Sparkman, advised Carl Bradshaw before the strike began that only foremen and salaried employees would work during the strike (R. 372).

Clifford Corum testified that his foreman, A. J. Crites, advised him that the plant would be closed during the strike. This conversation occurred several days before the strike (R. 367). Howard Goodlett testified that he was requested by Crites, his foreman, to help sweep up the machine shop just before he went off at 8 o'clock, a.m. on the morning of July 18, 1951 because the machine shop was going to be closed for a few days. It was not customary for machinists to clean up the entire shop (R. 388). These instructions were denied by Foreman Crites (R. 608-609).

A. J. Collum, a non-union employee, testified that the morning the strike began, Paul Russell was the only employee he saw who attempted to cross the picket line (R. 442).

Paul Russell went back to the vicinity of the picket line on two occasions between July 18 and August 22, 1951 (the day on which he resumed work) to "see what the situation was" (R. 34). One of these occasions was about a week after the beginning of the strike and the other was on the night before the plant reopened on August 22. On both occasions the picket line was present (R. 35). After he left the picket line on July 18, 1951 Russell did not get in touch with any representatives of the Company to find out whether or not his services were desired. He "assumed there was no work" (R. 48). No representative of the Company contacted Russell to tell him that work was available for him during the strike (R. 48-49). When he left the picket line on July 18 Russell "got together" with some other employees for the purpose of organizing a "back-to-work" movement (R. 50-51). Russell and employees Kirby and McCoy initiated the idea of a petition addressed to the Company requesting that it reopen. The first petitions initiated were worded to the effect: "If the company will reopen the gates to the people, we will cross the picket line and return to work" (R. 52). These petitions were carried to Respondent's attorney and Russell advised his attorney that it would take from two hundred to two hundred and fifty employees to operate the plant and his attorney advised that at least this number would have to sign the petition before the Company would agree to reopen the plant (R. 56). During the five weeks that the plant did not operate Russell spent some part of each day procuring signatures to petitions to the Company. The revised petition prepared by his attorney was as follows:

"The undersigned who were employed by you at the time of the work stoppage caused by the present strike do hereby request that you reopen your plant for work and we do hereby individually propose to resume work for you on the same terms and conditions

of employment as were in effect at the time of the work stoppage" (R. 85).

At back-to-work meetings of employees Mr. Harris addressed the employees present and advised that they would have to get enough people willing to go back who could operate the plant before the Company would reconsider reopening (R. 55).

Most of the plaintiff's witnesses testified that the petition was a petition to get the Company to reopen the gates, or was "asking for jobs where we could go to work."³

James Kirby was of the opinion that the Company would agree to reopen if half of the over five hundred employees would sign (R. 218). Comer Junkins advised A. J. Collum, likewise (R. 444).

The petition was submitted to the Company when approximately two hundred forty signatures had been obtained. The petition (Plaintiff's physical Exhibit 12) was identified and admitted into evidence (R. 568). The accompanying letter from Attorney Harris urges upon the Company its legal right to reopen the plant.

Upon receipt of the petition on August 20, 1951 the Company wrote a letter to each employee advising them that the plant would reopen on August 22, 1951 (Defendants' Exhibit 1, R. 49). The Company also ran a full page newspaper advertisement advising all employees that the Company would reopen on August 22 (R. 45).

The plant resumed operations on August 22, 1951 and Russell returned to work in the fourth car in a convoy of automobiles as shown by Plaintiff's moving picture exhibit (R. 89). Approximately one hundred highway patrolmen and local police officers were on hand at the reopening of the plant (R. 147-148). When the automobiles approached

³ Kenneth Johnson (R. 193); G. W. Pepper (R. 197); M. D. Whitworth (R. 201); L. H. Barnes (R. 203); Roy D. Free (R. 209); Comer Junkins (R. 214); James Kirby (R. 217-218); N. A. Palmer (R. 221); D. E. Taylor (R. 222); James W. Thompson (R. 226); C. E. Woodard (R. 240); A. J. Collum (R. 444).

the picket line the highway patrolmen motioned for the picket line to stand aside and the automobiles came on through (R. 149).

Following his return to work on August 22, 1951 Russell has continued to work without interruption or molestation (R. 67).

Russell "was bitterly opposed to unions" (R. 74). When he returned to work he organized an industrial employees club (R. 67). The purpose of the club was "carrying on the employer-employee functions without the intervention of any union" (R. 68, 69). The club distributed literature attacking unions published by the Committee for Constitutional Government (R. 88). This literature was received by Russell from the Decatur Chamber of Commerce (R. 71) of which he, an hourly paid electrician, was a member (R. 68). Russell also belonged to the Decatur Country Club at which he socialized with management officials of the Company (R. 72, 73). Russell testified before a committee of Alabama State Legislature in favor of the Alabama "Right to Work" bill (R. 74, 90). After the return to work Russell petitioned the National Labor Relations Board for an election to decertify the Union as the collective bargaining representative of the employees (R. 74). Russell and C. E. Woodard, plaintiff in an identical law suit, got the idea of law suits against the Union from a newspaper clipping (R. 239). Russell solicited other employees to file similar damage suits (R. 75). His object was to get as many people as possible to file damage suits (R. 75-76).

Answers of the defendant union to interrogatories propounded by the plaintiff were introduced in evidence by the plaintiff. The interrogatory answers showed that the Union was certified as the representative for the employees by the National Labor Relations Board (R. 132-139). Interrogatory answers further show that the employees of the Company voted to authorize the strike which was sanctioned and financed by the Union (R. 120). The answers further state that persons desiring to enter the plant "were advised that officials of the plant had requested that all persons be advised that the plant was closed and that said persons be

told that they could enter only for the purpose of getting tools, transacting business with the credit union, going to the company dispensary, making sales to the company, and other purposes dissociated from productive work in the plant" (R. 127-128).

D. The Dinky Incident

On August 20, 1951, the day it was announced that the plant would be reopened by newspaper advertisement and letters to all employees, the Company dispatched its small "dinky" locomotive from the plant to a point near the picket line to pick up five railroad cars of copper ingots, which had been left by the railroad at the property line (R. 251-252). Pickets gathered in front of the dinky engine and obstructed its progress (R. 254). Ralph Webster, one of the defendants, took the keys from the engine and threw them out of the cab (R. 255). The Chief of Police determined that the engine could not accomplish its mission without violence and orders were given to take the dinky back into the yard of the plant. It was discovered that the fan belt had been cut, the distributor head removed, the air hose cut and the wheels and brakes greased with cup grease (R. 257, 262). Paul Russell was not present on this occasion (R. 258, 266).

None of the Union officials were in the City of Decatur at the time this incident occurred (R. 294). Olen Drake, who was present at the time, testified that the Chief of Police asked him: "What steps are you going to take", and he said: "I don't know. These boys are new at this. We don't know. But we wish what you would do until we find out more about it; forget this thing until our men (Union representatives) come in, and we can settle this thing without any trouble." "We don't know anything to do except wait until they come in." Shortly, the Chief of Police, advised Drake that this would be done (R. 294).

Upon his arrival in Decatur, M. E. Duncan, Assistant Regional Director of the Union, told Olen Drake that pickets could not forcibly stop an engine from coming out to get copper (R. 511). On that day, August 20, 1951, Mr.

Duncan for the first time during the strike made arrangements for the Union to furnish bail bonds for employees who might be arrested (R. 520). This was done when Duncan learned of the newspaper advertisement concerning the reopening of the plant (R. 521).

APPENDIX D

DISSENT OF BOARD MEMBER REYNOLDS IN THE MATTER OF UNITED MINEWORKERS OF OF AMERICA, 92 NLRB 916, 920:

"Member Reynolds, dissenting in part and concurring specially:

"I disagree with the majority opinion insofar as it dismisses the complaint with respect to Ed J. Morgan. Like the Trial Examiner, I believe it inferable on the record in this case that Morgan, as District President, was well aware of, acquiesced in, sanctioned, ratified, and approved a plan in its origin and execution * * *. In my opinion, therefore, Morgan should not be exculpated for unfair labor practices committed herein.

"With respect to the remedy, I concur in the majority opinion insofar as it broadens the scope of the order recommended by the Trial Examiner by ordering the Respondents to cease and desist from restraining and coercing employees of the Employers, or any other employees, engaged in mining operations within the geographic limits of jurisdiction of District 23. I would, however, further broaden the remedial order by ordering the Respondents to reimburse the employees of the Employers for the loss of any earnings suffered by such employees because of the Respondents' violation of Section 8 (b) (1) (A).

"In this case, as in *Colonial Hardwood Flooring Company, Inc.*, 84 NLRB 563, employees were barred from their jobs and therefore deprived of their earnings by reason of illegal coercive activities on the part of respondent unions. In the *Colonial Hardwood* case, we denied the request made by the company for an order indemnifying employees for

any loss of earnings they may have suffered because of unfair labor practices on the part of the union and its agents. We there expressed the belief that the Board was without power to take such a step in the absence of an express mandate from Congress. Despite any participation in that unanimous determination by the Board, I now consider and conclude that that decision was erroneous. A comprehensive study of (1) the Supreme Court decisions interpreting Section 10 (e) of the Act prior to its amendment, (2) the language of Section 10 (e) of the Act, as amended, and (3) the legislative history of the 1947 amendment of the Act, leads me to this conclusion.

"Section 10 (e) so far as material herein reads:

"If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: *Provided, That where an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him.*" (Emphasis indicates the 1947 amendment.)

"It should be noted that the proviso amending Section 10 (e) is, like the participial phrase 'including reinstatement of employees with or without back pay,' descriptive of the broad grant of power given the Board. Prior to the amendment of the Act, the Supreme Court had occasion in several cases to discuss the meaning of the participial phrase. In *Phelps Dodge Corporation v. N. L. R. B.*, 313 U. S. 177, the Board's order required the company to hire and to make whole for their loss of earnings those persons whom the company had discriminatorily refused to hire. The company contended that since the persons in question

had never been employed by the company, the Board under Section 10 (e) had no power to issue its order, for the Board's power was, in the company's view, limited to ordering 'reinstatement * * * with * * * back pay.' The Court rejected this view, holding that the Board's remedial power was not limited by the language 'including reinstatement of employees with or without back pay.' The Court stated:

"To differentiate between discrimination in denying employment and in terminating it, would be a differentiation not only without substance but in defiance of that against which the prohibition of discrimination is directed.

"But, we are told, this is precisely the differentiation Congress has made. It has done so, the argument runs, by not directing the Board 'to take' such affirmative action as will effectuate the policies of this Act,' *simplicer*, but, instead, by empowering the Board 'to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act.' To attribute such a function to the participial phrase introduced by 'including' is to shrivel a versatile principle to an illustrative application. We find no justification whatever for attributing to Congress 'such a casuistic withdrawal of authority which, but for the illustration, it clearly has given the Board. The word 'including' does not lend itself to such destructive significance.'

"This language, beyond peradventure of a doubt, affirmed the power of the Board to take whatever affirmative action it believes will effectuate the policies of the Act, without imposing thereon any limitation by reason of the illustrative example referring to reinstatement.⁶ As the Section 10 (e)

⁶ The Supreme Court restated this interpretation of Section 10 (e) in *Virginia Electric and Power Company v. NLRB*, 319 U. S. 533. In affirming the order of the Board compelling the Respondent company to reimburse employees in the sum equivalent to the amount of checked-off dues the Court stated:

proviso is likewise merely illustrative of the Board's power, it follows that the proviso does not delimit the Board's remedial power. I am therefore of the opinion that the limitation which the Board placed on its remedial power in the *Colonial Hardwood* case was not warranted, and that contrary to our holding in that case the Board may award back pay in some situations where labor organizations cause employees to lose pay by unlawfully interfering with their right of ingress to their place of employment. Moreover, upon reconsideration I find no merit to the distinction made in the *Colonial Hardwood* case with respect to an award of back pay in this situation and an award of back pay in other cases since I consider interference with an employee's right of ingress to be tantamount to interference with the tenure or terms of the employment relationship between him and his employer in the ordinary case in which back pay is awarded.'

"The controlling court precedent with reference to the interpretation of Section 10(e) should obviate the necessity of resort to the legislative history of the amendment to Section 10(e). However, as the legislative history was consulted in the *Colonial Hardwood* decision, it may be appropriate to reexamine that history."

"Both the House and Senate bills as passed by the respective chambers contained amendments to Section 10(e),

(Continued from preceding page)

"Section 10 (e) of the Act authorized the Board to require persons found engaged or engaging in unfair labor practices 'to take such affirmative action including reinstatement of employees with or without back pay as will effectuate the policies of this Act.'

"The declared policy of the Act in Section 1 is to prevent, by encouraging and protecting collective bargaining and full freedom of association for workers, the costly dislocation and interruption of the flow of commerce caused by unnecessary industrial strife and unrest. Within this limit the Board has wide discretion in ordering affirmative action; its power is not limited to the illustrative example of one type of permissible affirmative order, namely, reinstatement with or without back pay. The particular means by which the effects of unfair labor practices are to be expunged are matters "for the Board not the Courts to determine";"

The Senate Bill (S. 1126) contained the amendment which was finally enacted into law. The purpose of the amendment is explained in Senate Report 105 (80th Cong., 1st Sess.) as follows:

"This subsection is amended by the proviso in two respects: (1) Back pay may be required of either the employer or the labor organization, depending upon which is responsible for the discrimination suffered by the employee."

"It thus appears that the Senate Committee submitting the report viewed the proviso as emphasizing the power of the Board to assert responsibility, in cases of discrimination, equally with respect to both employers and labor organizations.⁷

The House Bill (H. R. 3020) contained an amendment⁸ of Section 10 (c), the purpose of which was explained in House Report 245 (80th Cong., 1st Sess.) as follows:

⁷ The second respect in which Section 10 (c) was amended is not material to this case.

⁸ In debates on the bill in the Senate, the only reference to the 10 (c) amendment was made by Senator Hatch who remarked:

"The amendments of Section 10 (c) authorizing the Board to charge unions with back pay in the event the union is guilty of an unfair labor practice, seem fair enough, although I anticipate some difficulty on the Board's part in assigning responsibility for the initiation of strikes in many cases. I foresee that they may be faced with many 'chicken or egg' decisions."

⁹ The House Bill amendment of Section 10 (c) provided that:

"The Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take affirmative action requested in the complaint (which in the case of unfair labor practices under Section 8 (a) may include reinstatement of employees with or without back pay, and in the case of unfair labor practices under Section 8 (b) or 8 (c) may include deprivation of rights under this Act for a period not exceeding one year) as will effectuate the policies of this Act."

" '(The amendment), in language like that which is applicable to employers who violate Section 8 (a), authorizes the Board to order unions and their adherents who violate Section 8 (b) to cease and desist from their unfair labor practices and to take such affirmative action as will effectuate the policies of the Act. The Board is authorized to deprive them of rights under the Act for a period of not more than 1 year. *Under this clause the Board may also require a union to reimburse an employee whom it causes to lose pay the amount that he loses.*' (Emphasis supplied.)

" As the House amendment contained no specific language with respect to reimbursement by unions, this Report makes it clear that such remedy was contemplated under the general grant of power to the Board to take affirmative action 'as will effectuate the policies' of the Act.

" S. 1126 was reported out of conference as H. R. 3020. The House Conference Report on this bill contained the following explanation for the adoption of the Senate bill and the rejection of the House bill:

" In Section 10 (e) both the House bill and the Senate amendment incorporated language with respect to the Board's remedial orders in cases of unfair labor practices by labor organizations. The House bill provided that, in addition to ordering respondents to cease and desist from unfair labor practices, the Board could order employers to take affirmative action to effectuate the purposes of the Act, including reinstatement with back pay for employees (a provision appearing in the present act), and could also order representatives and employees to take affirmative action, and deprive them of rights under the Act for not more than 1 year. The Senate amendment did not contain the provision specifically authorizing the Board to deprive representatives and employees who engage in unfair practices of rights under the act, but did contain a provision authorizing the Board to require a labor organization to pay back pay to employees when the labor organization was responsible for the discrimination suffered by the employees.

"The House bill, by implication, limited the Board in its choice of remedial orders in cases of unfair labor practices by representatives not involving back pay, by specifying but one type of order that the Board might issue. The conference agreement therefore omits this provision of the House bill. As previously stated, employees are subject to the prohibitions of Section 8 (b) only when they act as agents of representatives, but in these and other cases, when they are disciplined or discharged for engaging in or supporting unfair practices, they do not have immunity under Section 7. The language in the Senate amendment without which the Board could not require unions to pay back pay when they induced an employer to discriminate against an employee is included in the conference agreement.

"The House amendment was rejected because of a fear that it might have limited the Board's remedial power. In view of the expressed desire not to encumber this power, the last sentence from the quotation of the House Conference Report is an anomaly. It alone in the legislative history tends to support the Board's decision in the *Colonial Hardwood case*. The sentence is however inconsistent with the purport of the separate reports of the House and Senate on the bills of those chambers, as well as being inconsistent with the tenor of the bulk of the House Conference Report. Moreover, it suggests that the remedial orders usable by the Board are to be limited to those specifically enumerated. This suggestion stands as an isolated inconsistency in the legislative history and is oblivious to the contrary Supreme Court precedent alluded to above. As it nowhere appears that Congress intended to enumerate the remedial orders available to the Board, or to reverse or modify Court precedents defining the import of Section 10 (c), the Board should not on the basis of an isolated sentence in the legislative history attribute to Congress this intention.

"Furthermore, even if we were to indulge in the assumption that the proviso to Section 10 (c) is the sole source of the Board's power to order labor organizations to indem-

nify employees for loss of pay, it does not follow that the power is circumscribed by the particular segment of the House Conference Report. By stating that without the 10 (c) proviso the Board could not require unions to pay back pay in cases of discrimination, the Report does not state that the Board can use such a remedy only in cases involving discrimination. It does no more than give an illustration of a use of the power being conferred.

"Upon the basis of all the foregoing, I am of the opinion that the proviso to Section 10 (c) is but an illustration of an instance where back pay may be required of a labor organization, and is not therefore definitive of the Board's power to order such a remedy. In this case, the Respondents, through the exercise of illegal coercive tactics which rendered civil authority helpless, caused a temporary hiatus in the tenure of employment of the employees of the employers thereby causing them a loss in pay. Regardless therefore of the issue of whether the Respondents caused or attempted to cause the Employers to discriminate against these employees as defined in Section 8 (b) (2) of the Act, the Respondent should be required to make whole the employees for the loss of pay suffered. Only in this way can the unfair labor practices committed by the Respondents be effectively remedied."

SUPREME COURT, U.S.

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OCT 1 1956

JOHN T. FEY, Clerk

IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1956.

No. ~~425~~ 21

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIR-CRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO), an Unincorporated Labor Organization, and MICHAEL VOLK, an Individual,
Petitioners,

vs.

PAUL S. RUSSELL,
Respondent.

**BRIEF FOR RESPONDENT IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF ALABAMA.**

HORACE C. WILKINSON,
First National Building,
Birmingham 3, Alabama,

JULIAN HARRIS,
State National Bank Building,
Decatur, Alabama,

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IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1956.

No.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIR-CRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO), an Unincorporated Labor Organization, and MICHAEL VOLK, an Individual,
Petitioners,

vs.

PAUL S. RUSSELL,
Respondent.

**BRIEF FOR RESPONDENT IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF ALABAMA.**

I. **THE FIRST AND ONLY FEDERAL QUESTION
PRESENTED HAS BEEN SETTLED.**

In *United Construction Workers v. Laburnum Construction Corporation*, 347 U. S. 656, this Court stated the question then before it in these words:

"The question before us is whether the Labor Management Relations Act, 1947, has given the National Labor Relations Board such exclusive jurisdiction over the subject matter of a common-law tort action for damages as to preclude an appropriate state court from hearing and determining its issues where such conduct constitutes an unfair labor practice under that act" (347 U. S. 656, at 657).

Though the questions sought to be presented by the petition for certiorari are skillfully couched in phraseology

apparently designed to avoid the impact of the *Laburnum* case, the fact remains that the only federal question involved in the present case is precisely the same as that quoted above.

Force and Violence Characterize Case.

Preventing employees from engaging in their work by threats of the use of force and violence was the wrongful conduct which was made the basis of the action in the *Laburnum* case.

Preventing the plaintiff in the present case from engaging in his work by blocking his access to his place of employment by means of mass picketing and force and violence consisting of taking hold of his ear and stopping it, and threats of bodily harm to him and damage to his property, was the wrongful conduct charged to these Petitioners and their confederates.

The wrongful conduct which was the basis of the common-law tort action in the *Laburnum* case, like the wrongful conduct which was the basis of the instant common-law tort action, was an unfair labor practice proscribed by Section 8 (b) (1) (A) of the National Labor Relations Act, as amended by the Labor Management Relations Act.

The tort in the *Laburnum* case, like the tort in the instant case, was the wrongful interference with the right to engage in a lawful business or occupation.¹

¹ *Sparks v. McCrary*, 156 Ala. 382, 47 So. 332, 22 L. R. A. (N. S.) 1224; *United States Fidelity & Guaranty Co. v. Miltonas*, 206 Ala. 147, 89 So. 732; *Bowen v. Morris*, 219 Ala. 680, 123 So. 222; *Hill Grocery Co. v. Carroll*, 223 Ala. 376, 136 So. 789; *Carter v. Knapp Motor Co.*, 243 Ala. 600, 11 So. 2d 383, 144 A. L. R. 1177; *Evans v. Swain*, 245 Ala. 641, 18 So. 2d 400; *Local 201 of Textile Workers Union of America v. Richardson*, 245 Ala. 37, 15 So. 2d 578; *Brennan v. United Hatters*, 73 N. J. L. 729, 65 Atl. 165, 9 L. R. A. (N. S.) 254, 118 Am. St. Rep. 727, 9 Ann. Cas. 698; *Sweetman v. Barrows*, 263 Mass. 349, 161 N. E. 272, 62 A. L. R. 311; *Chambers v. Prabst*, 145 Ky. 381, 140 S. W. 572, 36 L. R. A. (N. S.) 1207.

Petitioners' Attempt to Distinguish Laburnum Case.

The only distinction which Petitioners attempt to draw between the instant case and the *Laburnum* case, is that the plaintiff here is an employee, while the plaintiff in the *Laburnum* case was an employer, "whose rights," Petitioners say, "are not attempted to be protected by Congress in Section 7 of the National Labor Relations Act, and whose rights when violated cannot be redressed under Section 8 (b). (1) of the National Labor Relations Act," while the plaintiff here, they say further, has a specific remedy before the National Labor Relations Board under Section 8 (b) (1) of the Act for the violation of his rights (Petition, page 24).

The distinction lacks validity. Any person, whether he be employer, employee, or a stranger, whether he be the injured party, or a party having no interest whatsoever, and irrespective of his motive, can file a charge that an unfair labor practice has been committed, and thereby put in motion the investigative and preventive machinery of the National Labor Relations Board.²

The *Laburnum* Construction Corporation, in the situation with which it was confronted, could have put in motion the administrative procedure of the National Labor Relations Board to require the labor organization which was coercing and intimidating its employees, to cease and desist from such unfair labor practice. Mr. Justice Douglas pointed this out in his dissenting opinion in *United Automobile, Aircraft and Agricultural Implement Workers of America v. Wisconsin Employment Relations Board and*

² 29 U. S. C., § 160 (b); National Labor Relations Board, Part 102—Rules and Regulations, Series 6, § 402.9; *National Labor Relations Board v. Indiana & Michigan Electric Company*, 318 U. S. 9, 17-19; *National Labor Relations Board v. Fulton Bag & Cotton Mills*, 10 Cir., 180 F. 2d 68, 70-71; *National Labor Relations Board v. General Shoe Corporation*, 6 Cir., 192 F. 2d 504, 505; *Duro Test Corporation*, 81 NLRB 976.

Kohler Company, ... U. S. ..., 76 S. Ct. 794, where, in referring to the *Laburnum* case, he wrote:

“We there allowed a common-law tort action for damages to be enforced in a state court for the same acts that could have been the basis for administrative relief under the Federal Act” (76 S. Ct. 794, at 800).

The reports of the decisions of the National Labor Relations Board are full of instances in which the employers have invoked the jurisdiction of the Board to protect their employees from violent and coercive unfair labor practices condemned in Section 8 (b) (1) (A) of the Act.³

Notwithstanding the administrative relief available to the *Laburnum* Construction Corporation, which it could have obtained by filing a charge of an unfair labor practice with the National Labor Relations Board, this Court held that the Virginia Court had jurisdiction to entertain an action for damages sustained from the wrongful conduct which the Board had jurisdiction to prohibit. Mr. Justice Burton wrote:

“To the extent that Congress prescribed preventive procedure against unfair labor practices, that case (*Garner v. Teamsters etc. Union*, 346 U. S. 485) recognized that the Act excluded conflicting state procedure to the same end. To the extent, however, that Congress has not prescribed procedure for dealing with the consequences of tortious conduct already committed, there is no ground for concluding that existing criminal penalties or liabilities for tortious conduct have been eliminated. The care we took in the *Garner* case to demonstrate the existing conflict

³ A few illustrations are: *Sunset Line and Twine Co.*, 79 NLRB 1487; *Perry-Norvell Company*, 80 NLRB 225; *United Furniture Workers of America*, 81 NLRB 886; *Colonial Hardwood Flooring Company*, 84 NLRB 563; *Cory Corporation*, 84 NLRB 972; *Fairmount Construction Company*, 95 NLRB 969.

between state and federal administrative remedies in that case was, itself; a recognition that if no conflict had existed, the state procedure would have survived. The primarily private nature of claims for damages under state law also distinguishes them in a measure, from the public nature of the regulation of future labor relations under federal law." (347 U. S. 656, at 665. Parentheses supplied).

* * * * *

"The 1947 Act has increased, rather than decreased, the legal responsibilities of labor organizations. Certainly that Act did not expressly relieve labor organizations from liability for unlawful conduct. It sought primarily to empower a federal regulatory body, through administrative procedure, to forestall unfair labor practices by anyone in circumstances affecting interstate commerce. The fact that it prescribed new preventive procedure against unfair labor practices on the part of labor organizations was an additional recognition of congressional disapproval of such practices. Such an express recognition is consistent with an increased insistence upon the liability of such organizations for tortious conduct and inconsistent with their immunization from liability for damages caused by their tortious practices" (347 U. S. 656, at 666).

This Court, beginning with *Allen-Bradley Local v. Wisconsin Employment Relations Board*, 315 U. S. 740, and continuing through the *Kohler Company* case, has upheld state power and jurisdiction over the pre-emption claim, in every case presented to it, in which the conduct dealt with by the state was characterized by force and violence.

The decisions of this Court have established without peradventure that the plenary power of the forty-eight states to deal with force and violence in any appropriate

manner was not impaired or interfered with by the enactment of either the National Labor Relations Act or the Labor Management Relations Act. The most recent statement of this great truth was made by Mr. Justice Reed, writing for the majority in the *Kohler Company* case, as follows:

“It seems obvious that § 8(b) (1) was not to be the exclusive method of controlling violence even against employees, much less violence interfering with others approaching an area where a strike was in progress” (76 S. Ct. 794, at 798).

In support of that statement the *Laburnum* case was cited.

In the *Kohler Company* case, this Court sustained an injunction issued out of a state court, even though it duplicated an available remedy within the jurisdiction of the National Labor Relations Board.

That the existence of force and violence is the focal point in the solution of the problem of jurisdiction is manifest from a comparison of the *Kohler Company* case, with the decision in *Garner v. Teamsters Union*, 346 U. S. 485, in which the Court denied the jurisdiction of the state court to enjoin peaceful picketing, but in so doing was careful to point out:

“Nor is this a case of mass picketing, threatening of employees, obstructing streets and highways, or picketing homes” (346 U. S. 485, at 488).

National Labor Relations Board Has No Jurisdiction to Award Damages.

In order to give any semblance of plausibility to their argument, Petitioners must and do contend that the National Labor Relations Board has power and jurisdiction

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to award damages to an employee who has been prevented from engaging in his occupation by mass picketing, force and violence.

In view of the holding in the *Kohler Company* case that Section 8(b) (1) was not intended to be the exclusive method of dealing with violence, the existence of such alleged power of the Board to award damages to an employee injured by a violation of that Section would not oust the jurisdiction of the state court.

Aside from this, contentions that it has power to award damages in cases identical to this case have been uniformly rejected by the National Labor Relations Board.⁴

According to Petitioners' argument, this power and jurisdiction flows from the portion of Section 10 (c) of the Act, giving the Board authority to require any person guilty of an unfair labor practice, to take such affirmative action

⁴ *Colonial Hardwood Flooring Company*, 84 NLRB 568; *United Mine Workers*, 92 NLRB 916; *National Maritime Union of America*, 78 NLRB 971, which contains an excellent discussion of the question, and points out the view entertained by the Congress during its consideration of the Act that the Congress regarded the Board as a tribunal without jurisdiction to adjudicate claims for damages, compensatory or punitive. The disclaimer of this jurisdiction by the Board was approved in *Progressive Mine Workers of America v. National Labor Relations Board*, 7 Cir., 187 F. 2d 298, at 307. This administrative construction of the Act has been acquiesced in by the Congress for many years. The reasoning of the Board in *Colonial Hardwood Flooring Company*, *supra*, is not inconsistent with the reasoning of this Court in *Phelps-Dodge Corporation v. NLRB*, 313 U. S. 177, as is contended; what the Court there wrote was in rejecting the contention that the Board lacked power to order the employer to employ a person who had not theretofore been in its employment because of discrimination in hiring policy, as distinguished from its power to order reinstatement of one once employed, who had been discharged by reason of discrimination. Nor are the above decisions of the Board contrary to *Tidewater Electric Power Co. v. NLRB*, 319 U. S. 533. That was also a discrimination case, and in sustaining the power of the Board to order repayment of union dues withheld for a company-dominated union, the Court likened the order to a back pay order, and expressly forestalled any possible thought that it was "the adjudication of a mass tort" (319 U. S. 533, at 543).

as will effectuate the policies of the Act. We have heretofore pointed out that any person can file a charge of an unfair labor practice with the National Labor Relations Board and can thereby set the machinery of the Board in motion to prevent an unfair labor practice. If the argument which Petitioners make is sound, then by the same token, the Board had power and jurisdiction to require the labor organization sued in the *Laburnum* case to pay damages to the Laburnum Construction Corporation, because the Board could just as reasonably determine that such requirement would effectuate the policies of the Act, as would the requirement that a labor organization pay damages to an employee whose right to work had been interfered with. This Court in the *Laburnum* case was in complete disagreement with that concept of such broad and far reaching power and jurisdiction of the Board, as is evidenced by its statement that:

“The Labor Management Relations Act sets up no general compensatory procedure except in such minor supplementary ways as the reinstatement of wrongfully discharged employees with back pay. 61 Stat. 147, 29 U. S. C. (1952 ed.), § 160 (e); 29 U. S. C. A., § 160 (e).” (347 U. S. 656, at 665.)

II. SECOND ALLEGED FEDERAL QUESTION.

The claim is made, or rather we should say the claim is stated by Petitioners, that the action of the trial court in giving plaintiff's written requested Charge 9 infringed upon the federally protected right to strike, because, it is said, the charge permitted the jury to return a verdict for plaintiff without a finding that work was available to plaintiff during the strike (Petition, pages 11-13). Assuming contrary to the holding of the Supreme Court of Alabama, that the charge should be construed to have that meaning, it did not deprive the Petitioners of the right

to strike, or in any manner affect or detract from that right. Indeed, Charge 9 expressly states that picketing is lawful, and it directs a verdict for the plaintiff only on the hypothesis of the jury being reasonably satisfied from the evidence that the defendants stationed pickets on a public street, as alleged in the complaint, for the purpose of preventing the plaintiff from entering his place of employment, by means of intimidation, threats, coercion, force or violence, and that the plaintiff was thereby denied access to his place of employment. The defendants had no right, federal or otherwise, to engage in such unlawful picketing. Therefore, the charge could not possibly have deprived them of the federally protected right to strike or to picket peacefully.

Aside from the above, the Supreme Court of Alabama was correct in its holding that Charge 9 should not be construed so as to authorize a verdict for plaintiff without a finding that work was available to him, and that he lost work by reason of the unlawful picketing. The term, "place of employment", connotes work. The idea conveyed by the expression that the purpose of the pickets was to prevent plaintiff from entering his place of employment, and that he was denied access to his place of employment, was that he was prevented from working. There naturally would have been no reason for the pickets to have prevented plaintiff from entering his place of employment unless work was available to him, and no reason for plaintiff to have wanted to enter except for the purpose of working. Especially is this the reasonable construction of Charge 9 when it is considered in the light of the oral charge and the Petitioners' given written charges numbered 5, 6, 10 and 11 (R. 624, 637, 638). Charges 5 and 6 are illustrative, and are, respectively:

"5. I charge you that unless you are reasonably satisfied from the evidence in this case that the prox-

mate cause of plaintiff's inability to work at the Decatur plant of Calumet and Hecla Consolidated Copper Company (Wolverine Tube Division) during the period from July 18, 1951, to August 22, 1951, was that a picket line was conducted by the defendants in a manner which by force and violence, or threats of force and violence prevented plaintiff from entering the plant, and unless you are also reasonably satisfied from the evidence that work would have been available to plaintiff in the plant during said period, except for picketing in such manner, you should not return a verdict for the plaintiff" (R. 637).

"6. I charge you that unless you are reasonably satisfied from the evidence that the acts complained of by plaintiff occurred, and that the plaintiff suffered a loss of wages as the natural and proximate result of said acts, you should return your verdict for the defendants" (R. 637).

The Supreme Court of Alabama had good grounds for its conclusion that Charge 9 was not erroneous when reasonably construed.

III. THIRD ALLEGED FEDERAL QUESTION.

Under heading IV, on page 5 of the petition, the Petitioners state that one of the questions presented is: Did the Supreme Court of Alabama deny the federally protected right to strike by its decision that the verdict was authorized when, Petitioners contend, there was no evidence in the record to show that work would have been available to plaintiff if he had entered his place of employment and when, they say, the evidence demanded the conclusion that the employer closed its plant because of a lawful strike engaged in by a great majority of employees and not because of alleged improper picketing. That contention

pursued in more detail under the heading "Third Federal Question" beginning on page 13 of the petition.

Here again it seems reasonably clear that no federal question is presented. At every stage of the trial the right of the defendants to strike and to picket pursuant to their strike was recognized. The trial court in the oral charge to the jury explicitly stated defendant's right to strike (R. 625-626, 627, 630). There could have been no doubt in the minds of the jury that defendants had the right to strike and the right to picket, and that they could be held liable only if their picketing was characterized by force and violence. Mass picketing and force and violence, and consequent loss of wages and suffering of mental pain and anguish, were alleged in both counts of the complaint. Proof of them was essential to a recovery by the plaintiff. The jury was repeatedly instructed that the plaintiff could not recover unless he had reasonably satisfied the jury from the evidence that the acts complained of had occurred and that plaintiff had suffered a loss of wages as the natural and proximate result of such acts (Defendants' given written Charges 5, 6, 10 and 11, R. 637-638). The defendants having been accorded their right to strike and their right to picket, and these being the only federal rights asserted, it is difficult to comprehend how any federal question can arise from the alleged insufficiency of the evidence to establish the damage claimed by the plaintiff.

The Sufficiency of the Evidence.

The jury resolved the issues in favor of the plaintiff. The defendants stand convicted by the verdict of having maliciously, by the use of force and violence, prevented plaintiff from engaging in his employment. The verdict of the jury established not only the wrongful conduct of the defendants, but also the loss of wages and mental pain and anguish suffered by the plaintiff. Petitioners insinuate prejudice on the part of the jury, but they have every

reason to know that neither prejudice, bias nor sympathy influenced the trial judge when he overruled their motion for new trial, and thereby placed his stamp of approval on the verdict. This was the same trial judge who initially sustained the plea to the jurisdiction of the Court, a ruling fatal to the maintenance of the action until it was reversed (*Russell v. International Union, United Automobile, Aircraft & Agricultural Implement Workers of America*, 258 Ala. 615, 64 So. 2d 384). This was the same trial judge who set aside a verdict in favor of Burl McLemore, a plaintiff in a companion case, when he concluded that the argument of counsel to the jury in that case was improper (*McLemore v. International Union, United Automobile, Aircraft & Agricultural Implement Workers of America*, ... Ala. ..., 88 So. 2d 170), which case is referred to in footnote 13 on page 38 of the petition. Truly, the verdict received added verity from the judgment of the trial court overruling the motion for new trial.

Not content to abide by the verdict against them, the Petitioners also criticize the Supreme Court of Alabama for not detailing the evidence sufficiently to satisfy them. Having indulged in this criticism, Petitioners then devote two and one-half pages of the petition to cataloguing a few favorable, but meager bits of the more than 500 pages of testimony contained in the record, by which we suppose the Petitioners intend to persuade the Court that the evidence was not sufficient to support the verdict. They refer to certain tendencies of the evidence as "uncontradicted facts," some of which, in truth, are neither uncontradicted, nor facts.⁵

⁵ In the second paragraph on page 16 of the petition it is stated as an uncontradicted fact that over 400 employees of the company's slightly over 500 hourly paid employees voted unanimously to go on strike and supported the strike and participated in the picketing. The number of union members supporting the strike is based purely on estimates which ranged from 200 to 400 (Rea. 91, 337, 353, 507). A good indication of the number of union members is gained

In view of the argument in the petition, we will briefly mention some salient tendencies of the evidence which Petitioners either overlooked, or, possibly for the sake of brevity, omitted. The Union's regional director, assistant regional director, and international representative were all three present for the beginning of the strike; at meetings of the union members on the afternoon before the strike began, they urged that all union members be present the next morning to ~~picket~~ the only entrance to the plant en masse (R. 352-353). Plaintiff tried to report for work at his customary time and in his usual way, and remained at the picket line in his car trying to get through it for over an hour and a half, but the pickets by massing in front of him and by congregating on both sides of him, and by threats, persistently refused him admission to the plant (R. 82-95). The pickets treated Burl McLehore, an employee who tried to get through the picket line, in substantially the same manner (R. 148-171). The plaintiff testified that there were approximately 200 employees

from the fact that slightly over 51% of those participating in the representation election, held shortly before the strike, voted in favor of the union (R. 497, 557, 513).

In the third paragraph on page 16 of the petition it is stated that Howard Babis, company foreman, testified that he was advised by Mr. Oakes or some other supervisory official of the company that the plant would be closed during the strike. In support of that statement Petitioners cite pages 307 and 307 of the record. Those pages can be searched in vain for any such testimony by Babis.

In the same paragraph it is stated that the company stopped charging the furnace prior to the time the next shift was to come to work. The fact is that the company did not stop charging the heating furnace with copper billets until 7:30 A. M. (R. 370), and that when the third shift left work at 8:00 o'clock the furnace was almost full of copper billets, and that the proper and normal procedure in the event of a shutdown at 8:00 A. M. would have been to stop charging the furnace about three or three and one-half hours prior to that time, since it takes that length of time to empty the furnace (R. 370, 372-375, 280-288).

In the same paragraph it is stated that W. A. Bowling was told by his foreman that the plant was going to close during the strike. Bowling did so testify, but the inherent improbability of his testimony appeared from his cross-examination (R. 387).

present that morning who had brought their lunches and were prepared to go to work (R. 95), and examined some twenty of these employees who testified that they reported for work on the morning the strike began and had their lunches with them, and in nearly every instance had ridden to the plant in a car with several other employees, and generally had no knowledge of the strike until they reached the picket line (R. 230-279). No hourly rated employee entered the plant that morning (R. 288).

The defendants have never been able to explain satisfactorily why they were so determined to keep the employees out of the plant, if they really had an agreement with management to close the plant. They have not been able to explain why they would not allow the plaintiff through their picket line if work was not available to him. Nor have they yet explained why on a later occasion, the pickets swarmed on the company gasoline locomotive, which was proceeding on its way to pull several carloads of raw copper into the plant, and immobilized it by taking the ignition key from it, cutting the wires leading to the spark plug terminals, cutting the fan belts and air hose, and removing the distributor head (R. 289-299).

One persuasive indication that the alleged agreement to close the plant was not made, is that the invariable practice of the company was to notify all employees when the plant was to be shut down, but on this occasion no notice of an intention or decision to close the plant was given, although ample time was available for the giving of such notice to all three shifts after the conclusion of the union-management meeting at which defendants' testimony tended to show that the disputed agreement was made (R. 312, 372, 599-602).

Another convincing circumstance clearly demonstrating the improbability of the agreement to close, is the fact,

established by defendants' witness Sherman as well as by plaintiff's witness Cornell, that the third shift continued to charge the heating furnace with copper billets until about 7:30 A. M., although the proper and normal procedure, if the plant was to have been shut down at 8:00 A. M., would have been to stop charging the furnace about 4:30 A. M. so that it would have been empty at closing time (R. 368-389). The plant machinery, draw benches and furnaces were left in their usual and customary condition, similar to the situation which would exist under normal conditions with the first shift to commence their work at 8:00 A. M. o'clock (R. 288).

Another strong support for the verdict of the jury is found in the fact that one month after the strike commenced, when the State Highway Patrol had arrived at the scene of the picketing to preserve order and to keep the street open, approximately 230 hourly rated employees entered the plant and worked (R. 99), although the pickets were again present in their initial force (R. 359).

There are many other facts and circumstances which could be referred to in order to illustrate the ample evidence which impelled the conclusion which the jury reached. But we forego further discussion except to comment on the actual absurdity of the contention that management agreed to close the plant, when that contention is weighed in the light of the wholly inconsistent conduct of the defendants in massing several hundred pickets at the only entrance to the plant, and doing whatever the occasion demanded to intimidate the employees who wanted to work so as to keep them out of the plant. If there had been any such agreement, one picket with one sign would have sufficed. And if any such agreement had been made, the plaintiff would have been permitted to go through the picket line to the gate of the plant and get that information first hand. No matter how many wit-

nesses may have sworn to the making of such an agreement, these considerations revealed the glaring infirmity of such testimony and destroyed its probative value.

CONCLUSION.

Petitioners' fears of dire consequences which might flow from the denial of their petition are idle. Such consequences can easily be avoided by their giving heed to the admonition, implicit in the decisions of this Court, that picketing should be peaceful and that labor organizations should abstain from blocking streets and entrances to plants by mass picketing, and from the use of force, violence, coercion and intimidation in their picketing.

If Petitioners will limit their picketing to peaceful picketing, they will not be required to defend against actions such as this one by an employee to vindicate his rights which were violated by such illegal picketing. If Petitioners will respect the law and the rights of others, it will not be necessary for the Governor of Alabama to order out the State Highway Patrol to preserve law and order and to keep the streets open, as was necessary in this case when it became apparent that local law enforcement officers were unable to control the picketing. Nor will it be necessary for the Governor of Indiana to employ the National Guard with its tanks and bayonets, as in the fairly recent strike by this same union against the Perfect Circle Company. If Petitioners will discontinue the use of force and violence, it will not be necessary for them to defend against suits such as that of the Wisconsin Employment Relations Board seeking the injunctive process of the Wisconsin Courts to preserve law and order, as in the case of the Kohler Company strike which was before this Court in the *Kohler Company* case.

Petitioners in effect, are asking this Court to grant them immunity from liability for their torts. But legal ac-

countability for wrongful conduct is one of the cornerstones of the common law; it is a sobering reminder to refrain. That is one of the virtues of the verdict here.

Respectfully submitted,

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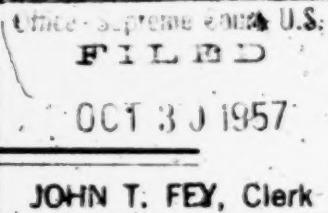
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IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1957.

No. 21.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT
AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA
(UAW-CIO), An Unincorporated Labor Organization, and
MICHAEL VOLK, An Individual,
Petitioners,

vs.

PAUL S. RUSSELL,
Respondent.

On Writ of Certiorari to the Supreme Court of Alabama.

BRIEF FOR RESPONDENT.

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IN THE
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No. 21.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT
AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA
(UAW-CIO), An Unincorporated Labor Organization, and
MICHAEL VOLK, An Individual,
Petitioners,

vs.

PAUL S. RUSSELL,
Respondent,

On Writ of Certiorari to the Supreme Court of Alabama.

BRIEF FOR RESPONDENT.

I. QUESTION PRESENTED.

The only federal question involved may be appropriately stated as "whether the Labor Management Relations Act, 1947, has given the National Labor Relations Board such exclusive jurisdiction over the subject matter of a common-law tort action for damages as to preclude an appropriate state court from hearing and determining its issues

where such conduct constitutes an unfair labor practice under that Act¹ and where the plaintiff in the action is an *employee* and the defendants are a labor organization and its agent, and where the damages claimed and recovered consisted of *loss of wages*, mental anguish and punitive damages, and where the wrongful conduct alleged in the complaint constituted an unfair labor practice under section 8 (b) (1) (A) of the Act and consisted of preventing the plaintiff from entering his place of employment by mass picketing, intimidation, taking hold of his ear, and threat of personal injury and property damage.

Stated a little differently, the question is whether Congress, by the enactment of the Taft-Hartley Act, intended to take away from the American working man his common-law right to maintain a common-law tort action in an appropriate state or federal court, and his incidental right to a jury trial, in a case where a labor organization and its agent and their confederates, by mass picketing, threats, and force and violence, prevented his entering his place of employment and caused him to lose wages and to suffer mental pain and anguish.

II. STATEMENT OF THE CASE.

Force and Violence Alleged.

The essence of the claim asserted in both counts of the complaint was that the defendants willfully and maliciously prevented the plaintiff from going to and from the plant where he was employed and from engaging in his employment. According to the complaint, the defend-

¹ The quoted portion of the statement of the question is from *United Construction Workers v. Laburnum Construction Corporation*, 347 U. S. 656, at 657; the italicized portion of the addition to the quotation are the facts of this case which petitioners claim render the *Laburnum* case inapposite, that is, that the plaintiff here is an *employee* and that an element of damage claimed is *loss of wages*.

ants accomplished that objective by establishing a picket line along and in the public street which was the only means of access to the plant. It was alleged that the picket line consisted of great numbers of persons, some of whom were standing along the street and some of whom were walking in a close and compact circle across the entire traveled portion of the street. The particular averment as to means employed to prevent plaintiff from entering the plant was that "said pickets by force of numbers, threats of bodily harm to plaintiff and damage to his property, and by force and violence consisting of taking hold of the automobile in which plaintiff was riding and thereby stopping it, and consisting of some of said pickets standing or walking in front of said automobile, blocked said public street and made passage to said plant over the same impossible for plaintiff and for others similarly situated, and defendants thereby wilfully and maliciously prevented plaintiff from going to and from said plant and from engaging in his said employment." It was further averred that this unlawful activity caused the plaintiff to lose earnings from his employment and to suffer mental anguish, both of which elements of compensatory damages were claimed, in addition to such punitive and exemplary damages as might seem appropriate to the jury to punish the defendants for their wrongful conduct, and to deter them and others from committing similar wrongs in the future. (R. 4-7, 10.)

Force and Violence and Loss of Wages Found by Jury.

By their plea of the general issue (R. 11) the defendants cast on the plaintiff the burden of substantially proving the above allegations. The trial judge repeatedly instructed the jury that plaintiff could not recover unless the jury was reasonably satisfied from the evidence that the acts complained of had occurred and that the plaintiff suffered a loss of wages as the natural and proximate re-

sult ² thereof.² The jury resolved the issues against the defendants. Thus do they stand convicted of mass picketing, accompanied by threats of bodily harm to plaintiff and damage to his property, and of having physically blocked his way by taking hold of his automobile and stopping it, and by pickets standing and walking in front of his automobile. The verdict of the jury also established that the natural and proximate consequence of that conduct was the loss of wages which the plaintiff would have earned had he been permitted to enter the plant.

Petitioners' Criticism of Findings Below.

Petitioners, not content to argue the case on the basis of the facts found by the jury, insinuate prejudice on the part of the jury (Petitioners' Brief, pp. 21, 62) and criticize the Supreme Court of Alabama because they say it failed to make a finding that work was available to the plaintiff at the time he was denied access to the plant by the unlawful picketing (Petitioners' Brief, p. 61, and footnote 23).

The Deliberation of the Jury and the Approval of Its Verdict by the Trial Judge.

While it is unusual for a record to shed much light on whether a jury is prejudiced, other than the inferences which may be drawn from the verdict and the evidence on which it rests, the record here does show that the members of the jury were not unanimous at the inception of their deliberations and that they were making a commendable effort to arrive at a decision, and after some de-

² E. g., defendants' given charges 5, 6, 10 and 11 (R. 639-641), one of which was:

"6. I charge you that unless you are reasonably satisfied from the evidence that the acts complained of by plaintiff occurred, and that the plaintiff suffered a loss of wages as the natural and proximate result of said acts, you should return your verdict for the defendants."

liberation reported to the court for further instructions, and that the trial judge very fairly answered their questions and encouraged them to reach a verdict, but did not put any pressure on them and, indeed, emphasized that no member of the jury should give up a conscientious view entertained by him after thorough consideration (R. 642-643).

The trial judge approved the verdict by the denial of defendants' motion for a new trial asserting that the verdict was contrary to the evidence and indicated bias and prejudice (R. 13), which motion was denied by the trial judge after he had the benefit of oral arguments and written briefs and, as he expressed it, had given the motion "full and mature consideration" (R. 16). This was the same trial judge who initially sustained the petitioners' plea to the jurisdiction of the court, a ruling fatal to the maintenance of this action until it was reversed,³ and who set aside a verdict against the petitioners and in favor of Burl McLemore, the plaintiff in the companion case referred to in footnote 3 on page 5 of Petitioners' Brief, when he concluded that argument of counsel to the jury in that case was improper, which ruling, incidentally, was affirmed by the Supreme Court of Alabama; notwithstanding the earnest insistence of McLemore to the contrary.⁴

Opinion of the Supreme Court of Alabama.

Criticism of the Supreme Court of Alabama because it failed to make a finding of the availability of work, is hardly appropriate when it is considered that appellate

³ *Russell v. International Union, United Automobile, Aircraft and Agricultural Implement Workers of America*, 258 Ala. 615, 64 So. 2d 384.

⁴ *McLemore v. International Union, United Automobile, Aircraft and Agricultural Implement Workers of America*, 264 Ala. 538, 88 So. 2d 170.

courts generally do not detail the evidence and make specific findings in declining to disturb the verdict of a jury which the trial judge has refused to set aside. Especially is such criticism unwarranted when it appears from the opinion of the Supreme Court of Alabama that this contention there made by the petitioners was clearly understood and accurately stated by the court, and was responded to with the statement that the record was voluminous and the evidence in conflict, and that there was evidence introduced by the plaintiff which, if believed by the jury, justified the verdict for the plaintiff, with a citation of the authorities showing that such ruling was in line with well-established principles. Furthermore, it appears that after so responding to the contention of the petitioners, the Supreme Court of Alabama in discussing the petitioners' request for a directed verdict, detailed several items of the evidence giving rise to a natural and reasonable inference of availability of work (R. 645-646; 264 Ala. 456, at 468-469, 88 So. 2d 175, at 184-185).

The Evidence and Inferences From It.

Since the petitioners have had "one trial and one appeal already" and since the verdict of the jury responding to the issues made by the complaint, the plea, and the instructions of the court, adjudicated the facts of the case, it would seem to be unnecessary to enter upon a lengthy discussion of the evidence. However, since petitioners have made the criticism of the findings below to which we have just alluded, and since they set forth in their brief several items of evidence favorable to them, some of which reflect a strained construction of the record, we deem it appropriate to mention some of the evidence showing the nature of the case, and that there was ample foundation for the verdict of the jury, and to comment on some of the conclusions which defendants draw from the record.

— 7 —

Responsibility of the Union.

The discussion of the evidence should be prefaced with the statement that the union did not disclaim responsibility for the occurrences on the picket line. At the inception of the picketing, T. J. Starling, M. E. Duncan and the defendant Michael Volk, respectively the Regional Director, Assistant Regional Director, and International Representative of the union, were all at the picket line participating in and supervising the picketing (R. 402, 407, 180-181). At two meetings of the members of the union on the day preceding the strike, Starling urged all members of the union to be at the picket line the next morning, and Duncan and Volk participated in making plans to that end (R. 401, 320-323). Herman L. Dobbs, who was a member of the union and who attended the second union meeting the day before the strike, testified that Volk and the others who addressed the meeting instructed the pickets to let salaried employees through the picket line, but not to allow hourly-paid employees to enter the plant (R. 243). In its answer to interrogatory 15 the union conceded that one of its representatives, usually one of the three named, was present at the picket line at practically all times (R. 122-123). The union also admitted that it furnished food and lunches to the pickets on duty during the strike (R. 123), and that during the picketing it made arrangements for such bail bonds as might be requested by Duncan or Volk for such of its members as might be arrested (R. 124).

The Testimony of the Plaintiff.

The plaintiff testified that he was employed at the copper plant as an hourly-paid electrician and did general maintenance work on electrical equipment, such as motor controls, instruments that controlled the furnace operations, the public address system, and the electric clock system, and that when he was not busy with special jobs

or with special assignments he worked on general over-all maintenance (R. 18, 45).

On the morning of July 18, 1951, the plaintiff had no knowledge or information that there was to be a strike at the plant and attempted to report for work as usual, having his lunch with him, and approached the plant in his car on Railroad Avenue, which was the only entrance to the plant and was a paved street from 20 to 24 feet wide (R. 20).

A picket line was located at approximately the point where Railroad Avenue entered the plant property, at which there were twenty-five to thirty pickets carrying signs and walking about three feet apart in a circle extending completely across the street (R. 26). Adjacent to the picket line, immediately off the south side of the street, was a group which plaintiff estimated at from one hundred to one hundred fifty persons (R. 29), and those in this group were constantly changing places with those walking in the circle (R. 30). There was another group of about fifty persons adjacent to the picket line immediately off the north side of the street (R. 30).

As plaintiff approached the picket line there were groups of people in the street, and he proceeded in his car slowly toward the plant, and when he got within twenty or thirty feet of the picket line he felt a drag on his car and stopped (R. 27). While plaintiff was stopped there, Starling, the Regional Director of the union, came to the side of plaintiff's car and the following conversation was had:

Starling: "Hourly or salaried?"

Russell: "What difference does it make?"

Starling: "I am the Regional Director in charge. If you are salaried, you can go on in. If you are hourly, this is as far as you can go" (R. 25-27).

At this time Howard Hovis, a union member and picket captain and originally a defendant who was stricken by

amendment, and who, according to the testimony of another witness, grabbed hold of plaintiff's car just before it stopped and was dragged for several feet (R. 96), walked to the car and he and Starling and plaintiff engaged in some further conversation, substantially to the effect that Starling told the plaintiff that he was blocking traffic and asked him to turn around and get out, and plaintiff told Starling and Hovis that he wasn't blocking traffic and that he wanted to go straight ahead (R. 27). The plaintiff testified that every time someone moved from in front of him he edged forward toward the entrance to the plant (R. 28), and that at one time an empty bus came up from behind going into the plant to pick up employees coming off third shift, and that at this time Starling came back over to his car and again told him that he was blocking traffic and would have to move, and he again told Starling that if they would open up in front, traffic wouldn't be blocked; Starling then motioned to the picket line to open up on the left side and they did so and the bus passed around the plaintiff and went through the picket line; and as it did so the plaintiff attempted to follow it through, and as soon as he moved forward someone in the group to the right of the picket line yelled, "He's going to try to go through," and another yelled, "Looks like we are going to have to turn him over to get rid of him," and several took up the cry, "Turn him over," and the picket line crowded between him and the bus and blocked his passage (R. 31-32). The plaintiff remained at the picket line for an hour and one-half or two hours, and from time to time tried easing into it, and each time he did so the pickets would stop walking and turn their signs down toward his car, and some of them would touch his car with their signs (R. 32). Plaintiff testified that he became satisfied that he could not get through the picket line without running over somebody or else getting turned over, and that he then backed out and went home (R. 33).

During the hour and a half or two hours plaintiff was in the vicinity of the picket line he observed a number of other maintenance and production employees come up by him and turn back, and he estimated that he saw something in the nature of two hundred employees there with their lunches prepared to go to work who were turned back (R. 33).

Testimony of Burl McLemore.

Burl McLemore, who was a press operator who worked on the first shift from eight in the morning until four in the afternoon, testified that on the first day of the strike he left his home as usual with his lunch and his eighteen year old son, who was going with him to return his car to his home after he got out at the plant, and that he had no information that there was to be a strike (R. 92-93). As McLemore approached the picket line he said that the pickets threw up their hands and were hollering, "There's one that's not going through the line this morning," and that Hovis grabbed at the handle on the door of his car, but it was locked and flipped over and Hovis did not hold it (R. 94). One of the pickets by the name of Runager, who was a member of the union bargaining committee, told McLemore that they were not going to let anybody in the plant and did not want to have any trouble, and McLemore told him if the pickets would turn his car loose, he would back up (R. 94-95). McLemore backed his car up and then pulled off the pavement to the left and tried to drive around the picket line, but the pickets moved over in front of him and again grabbed his car and shouted, "Turn him over" (R. 95). Runager again told McLemore that he could not go to work and McLemore got out of his car and told his son to take the car home, and he then tried to walk through the picket line and Runager grabbed him by the arm and again told him that they didn't want to have any trouble with him, and McLemore made no further effort to get by the picket line

(R. 95). McLemore also testified as to plaintiff's approach and about Hovis grabbing plaintiff's ear and the shouts of "Turn him over", and that four or five of the pickets caught hold of plaintiff's ear (R. 96-97).

William D. Schelbe Testimony.

Schelbe was purchasing agent at the copper plant and on the morning the strike began had no information that there was, to be a strike (R. 157), and was accompanied to the plant in his automobile by his wife and four year old son (R. 156). Before he got to the plant, Schelbe was stopped by Ralph Webster and a group of six persons with him (R. 157), at the same point where Webster stopped the plaintiff and tried to stop McLemore (R. 23, 93). This group asked to see Schelbe's identification card which identified him as a management employee of the company, and Schelbe objected to showing it and protested that they had no right to demand it (R. 157-158). When Schelbe refused to show his card, one member of the group came up to his car and put his hands on the car and said, "Schelbe, we'd certainly hate to have your car be the first one we turned over" (R. 158-159). Mrs. Schelbe became extremely nervous and upset and Schelbe then showed his identification card to the group and was allowed to proceed into the plant (R. 159-160).

Testimony of Jerry Comer.

Comer was a training supervisor and had no information that there was to be a strike at the plant on July 18, 1951, and as he approached the picket line he saw Paul Russell's car ahead of him on the right-hand side of the street with thirty or forty persons around it, and in addition to that, the picket line was walking in a circle across the street (R. 180-182). Michael Volk flagged Comer down and stopped him and asked him if he were salaried or hourly, and when Comer told him he was salaried, Volk said, "O. K." and motioned and yelled to the picket

line that it was "O. K." for Comer to pass through, and thereupon Comer pulled around to the left-hand side of the street and passed the plaintiff's car and went through the picket line (R. 180-181).

Testimony of Other Hourly-Paid Employees.

Twenty first shift hourly-paid employees, besides the plaintiff and McLemore, testified substantially that they reported for work on the morning of July 18, 1951, had their lunches with them and generally came in a car with from one to three other hourly paid employees, and most of them had no knowledge that there was to be a strike at the plant that day. These witnesses substantiated the fact of Russell's car being blocked by the picket line and that there were outcries of "Turn him over" (R. 186-238).

Plant Shut Down.

It was undisputed that no hourly-paid employee entered the plant on July 18, 1951 (R. 280). B. M. Cornell, general foreman of the converting department, testified that at the time the first shift was due to have come into the plant on the morning of July 18, the machinery, draw benches and furnaces were in their usual and customary condition, similar to what would have been the case if the first shift was coming in to work, and that the heating furnace was almost full of copper billets, whereas, the proper procedure, if the plant were going to close down, would have been to empty the furnace, which would have required an experienced crew three and one-half hours (R. 250-251). Supervisors emptied the heating furnace by operating the extrusion press and making copper tubing out of the billets by the regular process, and the plant did not again produce tubing until August 22, 1951 (R. 250).

Petitioners' Argument Work Not Available.

Petitioners argue that the plaintiff was not entitled to recover because they say he lost no wages by reason of

what they call "excessive picketing". This contention is based on two theories; the first being their claim that over 400 of the 550 hourly-paid employees of the company voted to strike and participated in the picketing, which they claim shows that so many employees voluntarily refrained from working that the plant could not have been operated; and the second theory being that the company agreed in the event of a strike that hourly-paid employees would not work during the strike. See Petitioners' Brief, pp. 9-10.

The evidence pertaining to both these contentions was in sharp conflict.

The Absurdity of Petitioners' Contentions.

The absurdity of the contention that management agreed to close the plant and not to admit hourly-paid employees, and the equal absurdity of the other contention that work was not available to the plaintiff at the time he was denied access to the plant, becomes obvious when those contentions are weighed against the wholly inconsistent conduct of the defendants in massing at least two hundred pickets at the only entrance to the plant, and doing whatever the occasion demanded to intimidate the employees who wanted to work so as to keep them out of the plant. If there had been any such agreement or understanding, or if the defendants had been so sure that they had such numerical strength as to be able to close the plant legitimately by the use of their economic power, one picket with one sign would have sufficed. Particularly is this so when it is considered that a part of the claim that Oakes stated to the union committee that the plant would be closed in the event of the strike, is the further very natural incidental claim that it was reported to the second union meeting held on the afternoon before the strike that Oakes had made that statement or agreement. And if any such agreement or under-

standing had been reached, the plaintiff would have been permitted to go through the picket line to the gate of the plant and get that information first hand. And if there had not been enough employees present at the picket line, who wanted to work, to operate the plant, the defendants would not have resorted to the tactics which they used in order to prevent their going in. No matter how many witnesses may have sworn to the making of such an agreement, and no matter how many employees the defendants' witnesses may have sworn belonged to the union and were participating in the strike, these considerations reveal the glaring infirmity of such testimony and destroy its probative value.

Another circumstance which strongly refutes the claim that so many employees voluntarily refrained from working that the employer could not have operated the plant, is that, when the State Highway Patrol had arrived at the scene of the picketing to preserve order and to keep the street open, approximately two hundred thirty hourly-rated employees entered the plant and worked (R. 37-38), although the pickets were again present in their initial force (R. 328).

Examination of the record references cited by petitioners to support their statement that over four hundred voluntarily voted to strike and participated in the picketing shows that the statement is based on mere estimates.⁵

⁵ For instance, petitioners state on page 9 of their brief that over 400 employees voted to strike and participated in the picketing, and cite in support of that pages 504 and 507 of the record and page 13a of their appendix. Pages 504 and 507 of the record show Duncan testified that in the first union meeting on the day before the strike better than 100 persons were present, and that in the other better than 250 persons attended. The references to the record to support the similar statement in the appendix show Drake testified that there were 150 present at the first meeting, Hovis testified that there were over 100 present at the first meeting and around 300 present at the second meeting, and Dyar testified that there were at least 250 present at the second meeting. Contrasted

Aside from the foregoing, this argument of the defendants entirely ignores the consideration that even though the jury may have thought the plaintiff was the only employee who wanted to work, it could very reasonably have inferred that work was available to him from the mere fact that he was a maintenance electrician and that when he was not busy with special assignments, he worked on general overall maintenance (R. 18, 45). Certainly, in a plant of sufficient magnitude to employ five hundred fifty hourly-paid employees, there would have been enough overall maintenance work to occupy the plaintiff if he had been able to enter the plant.

Conflict in the Evidence.

While five witnesses for the defendants did testify that at a meeting between the union committee and the company committee the day before the strike, Frank W. Oakes, the spokesman for the company committee, told the union committee that in the event of a strike the plant would be closed to hourly-rated employees (R. 287, 317, 463, 487, 506), Oakes disputed this and denied that he was told that the plant would be struck at 8:00 o'clock on July 18, and further denied that he told the union committee that the company would lock its gates against hourly employees and not admit them to the plant (R. 599).⁶ Illus-

with these estimates is the testimony of Dobbs that 100 were present at the second meeting (R. 241), which, added to the 100 present at the first meeting, makes a total of 200 union members at these two meetings. That total is not far different from plaintiff's estimate of 25 or 30 persons walking in the circle on the picket line, reinforced by a group of 100 to 150 on one side of the street and a group of 50 on the other side of the street, which estimates were in keeping with his other estimate that there were approximately 200 persons present in the vicinity of the picket line prepared to go to work.

⁶ Heretofore petitioners have made the highly technical contention that Oakes did not deny the testimony of the union witnesses because of the particular wording of the question put to him, viz.:

trating that the testimony of Oakes was entitled to more credence than that of the members of the union committee, is the fact that three of the members of the union committee specifically denied that Volk was present at the meeting (R. 330, 497, 514), and another of them was asked to name all persons present and did not mention Volk (R. 309). On the other hand, Oakes said that Volk was present at the meeting and produced the company's gate register (R. 597), showing that Volk signed into the plant with the others at the time this meeting was held, and Oakes testified that in the conference Duncan said that in the event of a strike the union would admit management and salaried employees to the plant, and Volk added to that statement, "At least at the start" (R. 599). Further corroboration of Oakes is found in the fact that the defendants' witnesses Drake, Hovis and Starling testified that it was reported to the second union meeting that the company had agreed that it would not admit hourly-rated employees to the plant in the event of a strike (R. 288, 489, 400), but the plaintiff's witness Dobbs, who was present at the meeting, testified that no such statement was made at the meeting (R. 244).

"Did you or any of your associates state to the union committee at that time and place that the company would lock its gates against hourly employees and not admit them to the plant?" (R. 599.) The particular form which the question took is attributable to the fact that in examining Oakes as a witness the plaintiff was rebutting expressions used by several of defendants' witnesses. For example, one member of the union committee testified that Mr. Oakes said, "The gates would be closed to hourly-rated employees" (R. 463); and the defendants' witness Bowling testified that he was advised by his foreman that "The gates are going to be locked until this thing is settled" (R. 356); and the defendants' witness Bradshaw testified his foreman said to him, "They're going to have the gates locked, but they're going to let the foremen and personnel in, salaried employees in," and also that a superintendent told him, "I am sure glad they are locking the gate because we've all got to work together when this thing is over" (R. 372). In this connection the gatekeeper testified that the gates were not locked but were kept open, and that there was no change in his standing instructions applicable to the admission of employees to the plant (R. 276-277).

In petitioners' statement of the case, Petitioners' Brief, page 10, it is said that A. J. Babis, a company foreman, testified that he had advised employees under his supervision that they would not work during the strike and that he had been advised that the plant would remain closed to hourly-paid employees for the duration of the strike because of a discussion between the company and the union, and that several employees testified that they received similar instructions from their supervisors prior to the time the strike began. One answer in the nebulous testimony of Babis when taken out of context, possibly justifies that statement, but a reading of the entire testimony of the witness (R. 266-276) is persuasive to the conclusion that he could recall only that he had heard some talk concerning whether or not the plant would operate in the event of a strike, and could not recall who had done the talking or the substance of what was said. It is true that janitors, Garth and Burks, testified that their foreman told them on the morning of the strike to go home because the plant was going to close down, but this testimony was categorically denied by their foreman, Hughes (R. 613-614), and that W. A. Bowling testified that an assistant foreman told him that "the gates are going to be locked until this thing is settled" (R. 356), but the inherent improbability of his testimony was shown by his cross-examination (R. 358-359). It is also true that Clifford Corum and Howard Goodlett testified that their foreman, A. J. Crites, advised them that the plant would be closed during the strike, but Mr. Crites categorically denied this (R. 608-609).

These portions of the evidence clearly point up the situation that in all of the important factual issues in this case, the evidence was in such irreconcilable conflict as to render it particularly appropriate for a jury, the traditional trier of the facts, to discard falsity and accept truth and thus to ferret the facts out of the incongruous mass of testimony.

III. SUMMARY OF ARGUMENT.

1. This action is a common-law tort action to redress an unlawful invasion of plaintiff's right to engage in a lawful occupation free from unlawful interference. Statutes which invade the common law are presumed to preserve traditional and familiar principles except when a contrary purpose is evident. *Isbrandsten Co. v. Johnson*, 343 U. S. 779. An act of Congress will not be construed as taking away a common-law right existing at the date of the enactment, or the corresponding remedy for its protection, unless the right is so repugnant to the statute that its survival would deprive the statute of its efficacy and render its provisions nugatory. *Texas & Pacific R. R. v. Abilene Cotton Oil Co.*, 204 U. S. 426.

2. Each question as to whether the jurisdiction of the National Labor Relations Board is so exclusive as to deprive a court or other agency of jurisdiction, is solved by determining the congressional intent. *Guss v. Utah Labor Relations Board*, 353 U. S. 1; *Garner v. Teamsters Union*, 346 U. S. 485.

3. The legislative treatment of secondary boycotts is internal evidence in the Act that Congress intended to preserve the jurisdiction of courts to adjudicate common-law torts growing out of force and violence in labor relations matters. This intent appears from the fact that section 8 (b) (4) of the Act condemned certain secondary boycotts as unfair labor practices, and section 10 conferred on the Board power to prevent them, but section 303 provided that damages arising from them could be recovered by action at law brought in either a state or federal court. This shows that Congress intended that the courts, rather than the Board, be the instrumentalities of government with power to award damages arising from unfair labor practices, and, coupled with the fact that there was no

necessity for Congress to make special provision for a universally recognized right of action such as the instant one, as there was in the case of secondary boycotts, some of which at common law in some jurisdictions did not furnish a right of action, reveals the congressional intent to preserve common-law tort actions such as this, and, of course, the traditional jurisdiction of the courts to entertain them. *United Construction Workers v. Laburnum Construction Corporation*, 347 U. S. 656.

4. The legislative history of section 8 (b) (1) (A) of the Act shows that Congress intended to protect the right of an employee against union restraint or coercion in the exercise of his right to engage in concerted activities, or to refrain therefrom, by supplementing state laws to that end. As to force and violence, the congressional intent was to encourage local law enforcement and to leave intact every available remedy and sanction designed to prevent it or to redress it. This is made abundantly clear from what was said when S. 1126 was reported, when Senator Ball offered the amendment which became section 8 (b) (1) (A) of the Act, during the discussion of the amendment in the Senate, and in the report of the House managers on the bill agreed to by the committee of conference.

A detail in the legislative history of particular significance in demonstrating that Congress specifically intended for actions such as this to survive and be available, is that section 12 (b) of the House bill, H. R. 3020, expressly provided for the bringing of such actions in the federal district courts without regard to the amount in controversy. In House Conference Report No. 510 on H. R. 3020, p. 42, it was stated that the bill agreed to by the committee of conference did not embody the specific provision which was section 12 (b) in the House bill, but that the effect was substantially the same, since unions were suable and could be subjected to liability for wrongful conduct under ordinary principles of law.

5. The power of the states to deal with force and violence in labor relations matters was not diminished by the National Labor Relations Act or the Labor Management Relations Act, 1947. *United Automobile, Aircraft and Agricultural Implement Workers of America v. Wisconsin Employment Relations Board and Kohler Company*, 351 U. S. 266; *United Construction Workers v. Laburnum Construction Corporation*, 347 U. S. 656; *Garner v. Teamsters Union*, 346 U. S. 485; *International Union, UAW-AFL, v. Wisconsin Employment Relations Board*, 336 U. S. 245; *Allen Bradley Local v. Wisconsin Employment Relations Board*, 315 U. S. 740.

6. The power left to the states to control force and violence in labor relations matters includes the power to prevent such conduct, to prosecute offenders criminally, and through their courts to redress wrongs characterized by such conduct by common-law tort actions for the recovery of both compensatory and punitive damages. *United Automobile, Aircraft and Agricultural Implement Workers of America v. Wisconsin Employment Relations Board and Kohler Company*, 351 U. S. 266; *United Construction Workers v. Laburnum Construction Corporation*, 347 U. S. 656.

7. Any person can file a charge of an unfair labor practice and thereby set in motion the administrative procedure of the Board. 29 U. S. C., § 160 (b); 29 CFR, 1955 Cum. Supp., § 102.9; *Local Union No. 25 of International Brotherhood of Teamsters v. New York, New Haven & H. R. Company*, 350 U. S. 155; *National Labor Relations Board v. Indiana & Michigan Electric Company*, 318 U. S. 9. Laburnum Construction Corporation in the situation confronting it, could have availed itself of that administrative remedy. That it was allowed to maintain its common-law tort action for damages, shows that the administrative remedy was not exclusive. *United Construction Workers v. Laburnum Construction Corporation*, 347 U. S. 656.

8. Section 8 (b) (1) of the Act was not designed to be the exclusive method of dealing with violence and the states may control violence by a remedy which duplicates a remedy within the jurisdiction of the Board. *United Automobile, Aircraft and Agricultural Implement Workers of America v. Wisconsin Employment Relations Board and Kohler Company*, 351 U. S. 266.

9. The Board has no power or jurisdiction to award damages to an employee in the form of lost wages to compensate him for the injury sustained by him by being denied access to his place of employment by force and violence. *Colonial Hardwood Flooring Company*, 84 N. L. R. B. 563; *United Mine Workers*, 92 N. L. R. B. 916; *Local 983, United Brotherhood of Carpenters*, 115 N. L. R. B. 1123; *United Electrical, Radio & Machine Workers, Local 1412*, 95 N. L. R. B. 391. See *United Construction Workers v. Laburnum Construction Corporation*, 347 U. S. 656; *Progressive Mine Workers of America v. National Labor Relations Board*, 7 Cir., 187 F. 2d 298, at 307; *National Maritime Union of America*, 78 N. L. R. B. 971.

10. Reason and justice suggest the affirmance of the judgment below. The maintenance of an action of this kind cannot interfere with any function of the Board. The defendants were not deprived of any right conferred upon them by the Act. The decision in this case will rule similar cases where the injuries may be more serious than the injury of this plaintiff. The defendants can avoid similar judgments by obeying the law and by refraining from mass picketing and violence. The defendants should be responsible for their torts. To grant them immunity from liability would license and encourage the grossest sort of abuse. The remedy granted here, therefore, serves not only as a wholesome and restraining influence on labor unions which will eventually inure to their benefit, but also furnishes the protection against invasion of the rights of every individual which it is one of the first duties of government to provide.

IV. ARGUMENT.

Presumption Against Elimination of Common-Law Right.

The National Labor Relations Act as amended by the Labor Management Relations Act, 1947, does not in express terms abolish the common-law-right on which plaintiff's action is founded, nor deprive any court of jurisdiction to entertain the complaint. If such right was abolished, or what amounts to the same thing, if the court was deprived of such jurisdiction, it was by implication, and the guiding principles to be followed in determining the congressional intent were stated very positively in *Texas & Pacific R. R. v. Abilene Cotton Oil Co.*, 204 U. S. 426, at 436, in these words:

"As the right to recover, which the court below sustained, was clearly within the principles just stated, and as it is conceded that the act to regulate commerce did not, in so many words, abrogate such right, it follows that the contention that the right was taken away by the act to regulate commerce rests upon the proposition that such result was accomplished by implication. In testing the correctness of this proposition we concede that we must be guided by the principle that repeals by implication are not favored, and, indeed, that a statute will not be construed as taking away a common-law right existing at the date of its enactment, unless that result is imperatively required; that is to say, unless it be found that the pre-existing right is so repugnant to the statute that the survival of such right would in effect deprive the subsequent statute of its efficacy; in other words, render its provisions nugatory."

The legislative scheme reflected by the Act, and the common-law right here asserted can coexist harmoniously.

The survival of this right and remedy not only does not "deprive the subsequent statute of its efficacy" nor "render its provisions nugatory," but is in keeping with the congressional intent manifested by the provisions of the Act itself, and frequently during the legislative process by statements of those who were most concerned with writing it.

Reference will be made to some of these indications of congressional will.

**The Legislative Scheme Was to Confer Preventive Power
on the Board and to Leave the Recovery
of Damages With the Courts.**

The Act carries internal evidence which unanswerably refutes the contention that Congress intended to deprive courts of jurisdiction to entertain common-law tort actions to recover for loss of wages and mental anguish arising from mass picketing and force and violence on the picket line. This internal evidence appears when section 8 (b) (4) of the Act is compared with section 303.

Weber v. Anheuser-Busch, Inc., 348 U. S. 468, and *Capital Service, Inc., v. N. L. R. B.*, 347 U. S. 501, following the lead of *Garnier v. Teamsters Union*, 346 U. S. 485, established the exclusiveness of the jurisdiction of the National Labor Relations Board to prevent peaceful picketing constituting a violation of section 8 (b) (4). However, when Congress came to consider the matter of awarding damages resulting from the secondary boycotts proscribed by section 8 (b) (4), it concluded that was a function not to be confided to the expertness of the Board. Congress knew that in the field of awarding damages, the courts, which were the traditional forum for such a matter, were the instrumentalities of government to which that power could

more appropriately be entrusted.⁷ Therefore, in subsection (b) of section 303 of the Act, Congress provided that any person injured in his business or property by reason of a violation of subsection (a) of section 303, which for this illustration is identical with section 8 (b) (4), could sue for damages in any court, state or federal, having jurisdiction of the parties.

Congress established rules of conduct by proscribing the types of concerted activity listed in sections 8 (b) (4) and 303 (a) because there was much difference of opinion in various jurisdictions as to the legality of such activities.⁸ Because of such difference of opinion, and in order to be sure that such concerted activities would not be legal in any state, Congress established substantive rules of conduct, provided an administrative agency to prevent the violation of the substantive rules, and provided that any person injured by such violation should have the right to recover damages in an appropriate state or federal court, a right not previously existing in some jurisdictions.

The feature of this legislative scheme especially important here is the granting of preventive power to the Board and redressive power to the courts. This legislative scheme so illuminates the question presented in this case as to spotlight the fallacy of the argument made by petitioners that Congress, by proscribing force and violence in

⁷ Senator Taft, discussing his amendment which was adopted as section 303 of the Act, said:

"We considered making it a procedure through the National Labor Relations Board also, but it is not felt I think by any of those on the other side of these questions that the Labor Board is an effective tribunal for the purpose of trying to assess damages in such a case. I do not think anyone felt that particular function should be in the Board." (2 Leg. Hist., Labor Management Relations Act, 1947, p. 1371.)

⁸ See the dissent of Mr. Justice Brandeis in *Traux v. Corrigan*, 257 U. S. 312, at 363-364, and footnote 28 discussing the boycott.

picketing as it did in section 8 (b) (1) (A), and by granting the Board the power to prevent that conduct as it did in section 10, intended to take away from the courts their traditional jurisdiction to redress such a tort, and to entrust that power exclusively to "the skilled and professional discernment"⁹ of an "expert agency."¹⁰ If Congress was willing to trust the solution of the extremely complex and difficult problems presented by section 303 to the "opinions and prejudices of the jurors in the thousands of state trial courts throughout the nation,"¹¹ with the risk of "thousands of varying interpretations by a myriad of state trial courts and juries,"¹² then certainly it was willing to leave intact the traditional jurisdiction of these same courts to solve and adjudicate the relatively simple question involved in this action, namely, whether or not Paul Russell was denied access to his place of employment, and caused to lose wages, by the massing of pickets entirely across, and on both sides of the only street furnishing access to the plant, which pickets blocked his way, not only by the force of their number, but with shouted threats to turn him over. It does not require an expert in the field of labor relations to conclude that picketing is accompanied by force and violence, and the threat thereof, when pickets mass in front of an employee, not only blocking his way, but threatening to turn his car over. It does not require an expert to decide that force and violence were involved when pickets, in order to keep McLemore out of the plant, grabbed him by the arm and threatened him with the remark that they didn't want to have any trouble out of him. It does not require an expert to find

⁹ Brief for petitioners, p. 65.

¹⁰ Brief for petitioners, p. 63.

¹¹ Brief for petitioners, p. 62.

¹² Brief for petitioners, p. 63.

that a union is responsible for such unlawful conduct when its regional director, assistant regional director and international representative, its three highest officers located in the area involved, appear on the picket line and supervise and encourage such conduct, and when the regional director tells the plaintiff, as he approaches the picket line, that if he is a salaried employee he can go on into the plant, but that if he is hourly-paid that is as far as he can go. Any jury in any court in any state is fully capable of discerning that such conduct was not peaceful picketing, and that it was effective to frustrate the purpose of the numerous employees who approached the picket line with their lunches with them ready to do their work as usual. Any jury with any sort of intelligence would reasonably conclude from that conduct, and from the unrelenting purpose to keep every production and maintenance employee out of the plant, that work was available, especially so, when it is considered that a month later, when law and order had been restored, approximately 230 employees entered the plant and operated it that day and continuously thereafter.

It may be appropriate to observe in this connection that no implication against the existence of the cause of action asserted in this suit should be indulged because of the fact that Congress did not specifically provide for it, but did provide for suits of the type specified in section 303 of the Act. It was not necessary to provide for a suit such as this one filed by this plaintiff, because such conduct as these defendants engaged in was tortious in every civilized state and a corresponding remedy to redress it followed as a matter of course.¹³ Therefore, it was not necessary that Congress make any provision for an action of this

¹³ "It is a fixed principle of the common law, that if a right exists, an appropriate remedy for its enforcement necessarily follows as an incident." *Janney v. Buell*, 55 Ala. 408, at 410. See cases cited, footnote 18, infra, page 39.

nature, as it was in the case of the secondary boycotts dealt with in section 303.

Specific support for these thoughts is found in *United Construction Workers v. Laburnum Construction Corporation*, 347 U. S. 656, at 665, as follows:

"One instance in which the Act prescribes judicial procedure for the recovery of damages caused by unfair labor practices is that with reference to the jurisdiction of federal and other courts to adjudicate claims for damages resulting from secondary boycotts. In that instance the Act expressly authorizes a recovery of damages in any Federal District Court and 'in any other court having jurisdiction of the parties.' By this provision, the Act assures uniformity, otherwise lacking, in rights of recovery in the state courts and grants jurisdiction to the federal courts without respect to the amount in controversy. To recover damages under that section is consistent with the existence of jurisdiction in state courts to enforce criminal penalties and common-law liabilities generally. On the other hand, it is not consistent to say that Congress, in that section, authorizes court action for the recovery of damages caused by tortious conduct related to secondary boycotts and yet without express mention of it, Congress abolishes all common-law rights to recover damages caused more directly and flagrantly through such conduct as is before us."

Legislative History.

In the Eightieth Congress, First Session, both the House of Representatives and the Senate were concerned with labor relations bills. The House bill was designated as H. R. 3020 and the Senate bill as S. 1126. On April 17, 1947, the House passed H. R. 3020 and sent it to the Senate. 1 Leg. Hist., Labor Management Relations Act, 1947,

p. 863; 2 op. cit., p. 1002. On May 13, 1947, the Senate proceeded to consider H. R. 8020 and amended it by striking all of it after the enacting clause, and by inserting in lieu thereof the text of S. 1126 as amended, which had been given full consideration in the Senate. *Id.*, p. 1522. A committee of conference resolved the differences between the two houses and its report was agreed to by the House and the Senate, 1 Leg. Hist., Labor Management Relations Act, 1947, p. 899; 2 op. cit., pp. 1619-1621. Section 8 (b) (1) (A), the provision of the Act here particularly material, derived from the Senate bill, and therefore we find most of its legislative history in the proceedings in the Senate.

The extracts hereinafter quoted from the legislative history of Section 8 (b) (1) (A) of the Act clearly demonstrate that it was not intended to oust the states of jurisdiction over force and violence on the picket line. Both the proponents and the opponents of the amendment which became Section 8 (b) (1) (A) of the Act made many statements revealing their thoughts that the amendment would not in any wise impair the power of states to control and prohibit mass picketing and force and violence. There was frequent expression of the view that the power of the National Labor Relations Board to prevent the unfair labor practice proscribed in Section 8 (b) (1) (A) would supplement rather than supersede the power of the states in this respect.

Along with Senate Report 105 of the Senate Committee on Labor and Public Welfare on S. 1126, Senator Taft, the chairman of the committee, and Senators Ball, Donnell, Jenner, and H. Alexander Smith, members of the committee, filed their supplemental views stating their intention to offer on the Senate floor, or to support four proposed amendments to S. 1126. One of the amendments was that which, with slight modification became section 8 (b) (1) (A) of the National Labor Relations Act as amended. Con-

cerning this proposed amendment, the supplemental statement of Senator Taft and his colleagues was:

"The committee heard many instances of union coercion of employees such as that brought about by threats of reprisal against employees and their families in the course of organizing campaigns; also direct interference by mass picketing and other violence. Some of these acts are illegal under State law, but we see no reason why they should not *also* constitute unfair labor practices to be investigated by the National Labor Relations Board, and at least deprive the violators of any protection furnished by the Wagner Act" (1 Leg. Hist., Labor Management Relations Act, 1947, p. 456; emphasis supplied).¹⁴

Thus, in the very beginning, did the sponsors of the amendment declare that making mass picketing and force and violence an unfair labor practice under the Act, was not to affect the illegal status of such conduct under state law, but that in addition to such illegality, it should also be an unfair labor practice which would deprive the violators of protection under the Act.

On April 25, 1947, Senator Ball, on behalf of himself and Senators Byrd, George and H. Alexander Smith, offered the amendment referred to in the above statement of supplemental views, which became section 8 (b) (1) (A) of the Act. The Senator stated the purpose of the amendment as follows:

"The purpose of the amendment is simply to provide that where unions, in their organizational campaigns, indulge in practices which, if an employer indulged in them, would be unfair labor practices, such as making threats or false promises, or false statements, the unions also shall be guilty of unfair labor

¹⁴ Referred to in the *Laburnum* case, 347 U. S., at 668.

practices". (2 Leg. Hist., Labor Management Relations Act, 1947, p. 1018).

Senator Ball then mentioned several cases to illustrate the type of conduct the amendment was directed against and added:

"The common practice in organization campaigns is for the business agent to threaten all employees and tell them that if they do not join the union before election, or vote for it, they will be charged double initiation fees afterward. That is done in a great many cases. It is clearly an attempt to coerce and threaten employees in the exercise of the freedoms guaranteed by the act. *However, such practices do not fall within the purview of State Laws against violence and that sort of thing.*" (Id., p. 1019; emphasis supplied.)

Then, after mentioning a case where pickets had assaulted and beaten an employee to force him to join a union, the Senator further said:

"That is another type of coercion. If the unions, in their organizing drives, cannot persuade a majority to join voluntarily, they place a picket line in front of the shop, make scurrilous remarks about the employees as they go to work, and subject them to all kinds of abuse, even verging on physical violence, but very often not reaching the point where State laws would come into effect." (Id., pp. 1019-1020; emphasis supplied.)

From those remarks it is clear that it was the purpose of the sponsors of the amendment to supplement state laws against force and violence in labor relations, by proscribing certain conduct falling short of a violation of the laws of the states.

Senator Ives, one of the opponents of the amendment, indicated his recognition of the fact that the adoption of the amendment as a part of the bill would not eliminate the liability of a union under state law for violence and physical coercion when he said:

"Moreover, assuming that these proscribed acts involve violence and physical coercion, the provision is unnecessary, because offenses of this type are punishable under State and local police law. In fact, the enactment of this provision would make unions and their agents liable twice for the same offense, once under State and once under Federal law" (Id., p. 1021).

During the debate on the amendment, Senator Taft expressly and specifically stated that there should be two remedies for union violence, one under state laws and one under the Act. His language left no doubt as to his concept of the amendment. He said:

"There is no law of any state providing that a man cannot threaten another man that if he does not join a union he may lose his job, or that something may happen to him other than actual physical violence. There are plenty of methods of coercion short of actual physical violence. So that in this section there is no duplication whatever. But suppose there is duplication in extreme cases; suppose there is a threat of violence constituting violation of the law of the State. Why should it not be an unfair labor practice? It is on the part of the employer. If an employer proceeds to use violence, as employers once did, if they use the kind of goon-squad tactics labor unions are permitted to use—and they once did—if they threaten men with physical violence if they join a union, they are subject to State law, and they are also subject to be proceeded against for violating the National Labor

Relations Act. *There is no reason in the world why there should not be two remedies for an act of this kind*" (Id., p. 1031).¹⁵

Senator Taft further said:

"Mr. President, I should like to call attention to the fact that the amendment proposed by the Senator from Minnesota (Mr. Ball) is practically contained in the Wisconsin Labor Relations Act and has been used in Wisconsin as a means not only of preventing the coercion of employees, but also of attempting, bringing such action as can be brought by administrative law, to end mass picketing. Of course, if administrative law fails, it would be necessary finally to resort to the police powers of the States" (Id., p. 1032).

There again did Senator Taft make clear that the adoption of the amendment would not deprive the states of their police power to prevent mass picketing, and that the power being conferred upon the Board to prohibit mass picketing as an unfair labor practice was supplementary to the power of the states.

Later in the debate, Senator Ball went so far as to urge as a consideration in support of the proposed amendment, that for the federal government to condemn force and violence would *encourage* good local law enforcement to prevent coercion. His argument was:

"The only laws we have had restrain employers and not unions. So it may well be that many of the types of activities of unions which we are seeking to restrain somewhat by this mild amendment are the kind of activities which would be corrected by good local law enforcement. *But I think we shall encourage that kind of local law enforcement if the Federal Gov-*

¹⁵ Referred to in the *Laburnum* case, 347 U. S., at 668.

ernment, acting through Congress, states clearly its position that individual employees are entitled to their right of self-organization free from coercion from any source, whether it be the employer, the union, or some outside source" (Id., p. 1200; emphasis supplied).

That there was no thought that the adoption of the amendment would remove force and violence and mass picketing from the control of the states is shown by the following colloquy between Senator Ives and Senator Ball:

"Mr. Ives: It is the Senator's idea that machinery would be established under the control of the National Labor Relations Board to stop mass picketing?

Mr. Ball: No; of course not.

Mr. Ives: The Senator's idea is to have the police power of the Federal Government exercised?

Mr. Ball: No. But I think that a mass picket line would be an unfair labor practice. We would not stop it, of course. The Senator knows that the process of filing an unfair labor practice charge and getting a hearing before the Board would be a completely impractical way of dealing with a mass picket line. It might perhaps restrain unions in the use of the particular weapon, and I think that would be all to the good. It might discourage them a little, because it would be an unfair practice" (Id., p. 1202).

Senator Taft again expressed the thought that duplication of State laws was no valid objection to the amendment where violence was involved, when he said:

"The Senator from Oregon a while ago said that the enactment of this proposed legislation will result in duplication of some of the State laws. It will duplicate some of the State laws only to the extent, as I see it, that actual violence is involved in the threat or in the operation."

" * * * The Senator is suggesting that the enactment of this proposed legislation will bring about a condition which will compel the local court to do its duty. If that will be the result, I believe it will be a beneficial effect."

" * * *

" Mr. President, I may say further that one of the arguments has suggested that in case this provision covered violence it duplicated State law. I wish to point out that the provisions agreed to by the committee covering unfair labor practices on the part of labor unions also might duplicate to some extent that State law. Secondary boycotts, jurisdictional strikes, and so forth, may involve some violation of State law respecting violence which may be criminal, and so to some extent the measure may be duplicating the remedy existing under State law. But that, in my opinion, is no valid argument" (Id., p. 1208).

The Ball Amendment which became section 8 (b), (1) (A) of the Act was adopted on May 2, 1947 (Id., p. 1217).

A detail in the legislative history of the Act particularly significant in showing that there was no intention to eliminate common-law tort actions arising from mass picketing and force and violence occurring on the picket line, is the difference in the treatment of such conduct under the House bill and the bill recommended by the conference committee and agreed to by the House and Senate. Section 12 (a) (1) of H. R. 3020, as reported by the House Committee on Education and Labor and as the bill passed the House, provided that it was an unlawful concerted activity by the use of force, violence, physical obstruction, or threats thereof, to prevent any individual from entering upon an employer's premises. Section 12 (b) of the bill provided that any person injured in his business, person or property by such an unlawful concerted activity affecting commerce, could sue the persons responsible there-

for in any district court of the United States having jurisdiction of the parties, without regard to the amount in controversy, and recover the damages sustained by him, together with the cost of the suit and a reasonable attorney's fee. 1 Leg. Hist., Labor Management Relations Act, 1947, pp. 77-79, 204-206. In this connection House Conference Report No. 510 on H. R. 3020, p. 42, states:

"Under the new section 8 (b) of the Senate amendment, the following unfair labor practices on the part of labor organizations and their agents were defined:

(1) To restrain or coerce employees in the exercise of rights guaranteed in section 7, or to restrain or coerce an employer in the selection of his representatives for collective bargaining or the adjustment of grievances. This provision of the Senate amendment in its general terms covered all of the activities which were proscribed in section 12 (a) (1) of the House bill as unlawful concerted activities and some of the activities which were proscribed in the other paragraphs of section 12 (a). While these restraining and coercive activities did not have the same treatment under the Senate amendment as under the corresponding provisions of the House bill, participation in them, as explained in the discussion of section 7, is not a protected activity under the act. Under the House bill, these activities could be enjoined upon suit by a private employer, specific provision was made for suits for damages on the part of any person injured thereby, and employees participating therein were subject to deprivation of their rights under the act. The conference agreement, while adopting section 8 (b) (1) of the Senate amendment, does not by specific terms contain any of these sanctions, but an employee who is discharged for participating in them will not, as explained in the discussion of section 7, be entitled to reinstatement. Furthermore, since in section 302 (b),

unions are made suable, *unions that engage in these practices to the injury of another may subject themselves to liability under ordinary principles of law.*"

(1 Leg. Hist., Labor Management Relations Act, 1947, p. 546.)

While the reference to section "302 (b)" in the last sentence of the above quotation was likely intended to be section 301 (b) and while there is doubt and disagreement as to the meaning and effect of that section,¹⁶ the gist of that portion of the report is that irrespective of the differences in the bill recommended by the conferees and the bill which the House had previously passed, the effect of such conduct was the same under both bills, because unions were suable and were liable under "ordinary principles of law," meaning, of course, the common law. The essence of the report of the conferees to the House was that, since unions were suable, they could be subjected under the common law to liability for damages arising from preventing an employee from entering his place of employment, and it was not necessary that the bill contain a specific provision to that effect, such as section 12 (b) of H. R. 3020 as it passed the House.

Another indication of congressional intent is gained from the fact that the National Labor Relations Act, § 10 (a), referring to the power of the Board to prevent unfair labor practices, specifically provided, "This power shall be exclusive" and that the 1947 amendment eliminated the phrase "shall be exclusive." 2 Leg. Hist., Labor Management Relations Act, 1947, pp. 1661, 1673. The effect of this omission was stated in House Conference Report No. 510, p. 52, in this way:

"By retaining the language which provides the Board's powers under section 10 shall not be affected

¹⁶ *Textile Workers Union v. Lincoln Mills of Alabama*, U. S. ..., 77 S. Ct. 912.

by other means of adjustment, the conference agreement makes clear that, when two remedies exist, one before the Board and one before the courts, the remedy before the Board shall be in addition to, and not in lieu of, other remedies." 11 op. cit., p. 556.)¹⁷

The conclusions reasonably drawn from the portions of the legislative history of Section 8 (b) (1) (A) catalogued above are:

- (1) That Congress not only did not entertain any thought of withdrawing or limiting the plenary power of the states to deal with force, violence and mass picketing, but on the other hand, intended that state power should remain intact, and that the use of this power would be encouraged by congressional condemnation of such conduct;
- (2) That the power of the Board to issue a cease and desist order against the unfair labor practice defined in Section 8 (b) (1) (A), together with court enforcement of that order and the possibility of a contempt citation, was not considered by the Congress as an effective method of preventing mass picketing and force and violence, and was therefore not intended as a substitute for state action; and
- (3) That the cease and desist procedure and the loss of rights under the Act by transgressors, were the only federal remedies for, or sanctions against that type of conduct envisaged by the Congress.

The Decisions of the Court.

In every case presented to it since the enactment of the National Labor Relations Act, involving a question as to the exclusiveness of the jurisdiction of the Board, the

¹⁷ Referred to in the *Laburnum* case, 347 U. S., at 667, footnote 9; and in the *Kohler* case, 351 U. S., at 271, footnote 8.

Court has exhibited a thorough understanding of the congressional intent demonstrated by the foregoing expressions and indications, and has admirably fashioned its decisions and opinions so as to give effect to that intent, and so as to add another branch fitting symmetrically to the body of the law pertaining to the proper relationship between the states and the federal government and their respective areas of action.

Force and Violence.

These decisions and opinions have established beyond peradventure that the plenary power of the states to deal with force and violence in any appropriate manner was not impaired in the slightest degree by the enactment of either the National Labor Relations Act or the Labor Management Relations Act, 1947. The Court has sustained state power and jurisdiction against the pre-emption claim in every case in which the conduct dealt with by the state was characterized by force and violence.

The Laburnum Case.

United Construction Workers v. Laburnum Construction Corporation, 347 U. S. 656, is the case most similar to the instant case and, we submit, is controlling here.

The first paragraph of the opinion in the *Laburnum* case states the question there involved and the Court's answer to it as follows:

“The question before us is whether the Labor Management Relations Act, 1947, has given the National Labor Relations Board such exclusive jurisdiction over the subject matter of a common-law tort action for damages as to preclude an appropriate state court from hearing and determining its issues where such conduct constitutes an unfair labor practice under that Act.” For the reasons hereafter stated, we hold that it has not. (347 U. S. at 657.)

Preventing employees from engaging in their work by threats of the use of force and violence was the wrongful conduct which was made the basis of the action in the *Laburnum* case. Preventing the plaintiff in the present case from engaging in his work by blocking his access to his place of employment by means of mass picketing, by taking hold of his car and stopping it, and by threats of bodily harm to him and damage to his property, is the wrongful conduct charged to these petitioners and their confederates.

The wrongful conduct which was the basis of the common-law tort action in the *Laburnum* case, like the wrongful conduct which is the basis of the instant common-law tort action, was an unfair labor practice proscribed by section 8 (b) (1) (A) of the Act.

The tort in the *Laburnum* case, like the tort in the instant case was the wrongful interference with the right to engage in a lawful business or occupation.¹⁸

The recovery of the plaintiff in the *Laburnum* case, like that of the plaintiff here, included both compensatory and punitive damages.

Notwithstanding these identities, petitioners claim there is a distinction between the instant case and the *Laburnum* case because the plaintiff here is an *employee*, while the

¹⁸ *Sparks v. McCrary*, 156 Ala. 382, 47 So. 332; *United States Fidelity & Guaranty Co. v. Millonas*, 206 Ala. 147, 89 So. 732; *Rowen v. Morris*, 219 Ala. 689, 123 So. 222; *Hill Grocery Co. v. Carroll*, 223 Ala. 376, 136 So. 789; *Carter v. Knapp Motor Co.*, 243 Ala. 600, 11 So. 2d 383; *Evans v. Swaim*, 245 Ala. 641, 18 So. 2d 400; *Local 204 of Textile Workers Union of America v. Richardson*, 245 Ala. 37, 15 So. 2d 578; *Brennan v. United Hatters*, 73 N. J. L. 729, 65 Atl. 165; *Sweetman v. Barrows*, 263 Mass. 349, 461 N. E. 272; *Chambers v. Probst*, 145 Ky. 381, 140 S. W. 572; *Chippley v. Atkinson*, 23 Fla. 206, 1 So. 934; *Wortex Mills v. Textile Workers Union*, 380 Pa. 3, 109 Atl. 2d 815; *Mische v. Kaminski*, 127 Pa. Super. 66, 193 Atl. 410; *Erdman v. Mitchell*, 207 Pa. 79, 56 Atl. 327; *Perkins v. Pendleton*, 90 Me. 166, 38 Atl. 96; *Luck v. Clothing Cutters' & T. Assembly*, 77 Md. 396, 26 Atl. 505.

plaintiff in the *Laburnum* case was an *employer*, "whose rights" petitioners say, "are not attempted to be protected by Congress in Section 7 of the National Labor Relations Act, and whose rights when violated cannot be redressed under Section 8(b) (1) of the National Labor Relations Act," while the plaintiff here, they say, has a specific remedy for the violation of his rights. See Petitioners' Brief, pages 41-44.

If the Court had intended the *Laburnum* case to rest on the narrow basis asserted by petitioners that the Act did not protect *employers'* rights, certainly it would have said that, rather than have left it to the ingenuity of counsel to discern that as the rationale of the decision. Certainly, if that had been the view of the Court, Mr. Justice Burton was fully capable of giving articulate expression to such a simple idea. If that had been the thought of the Court we would not find in its opinion this paragraph:

"The 1947 Act has increased, rather than decreased, the legal responsibilities of labor organizations. Certainly that Act did not expressly relieve labor organizations from liability for unlawful conduct. It sought primarily to empower a federal regulatory body, through administrative procedure, to forestall unfair labor practices by anyone in circumstances affecting interstate commerce. The fact that it prescribed new preventive procedure against unfair labor practices on the part of labor organizations was an additional recognition of congressional disapproval of such practices. Such an express recognition is consistent with an increased insistence upon the liability of such organizations for tortious conduct and inconsistent with their immunization from liability for damages caused by their tortious practices" (347 U. S. at 666).

If petitioners are correct in their view of what was held in the *Laburnum* case, certainly the Court wasted time and

effort in setting out the history of the Labor Management Relations Act, and in concluding that the provision of section 303 of the Act providing for actions for damages resulting from secondary boycotts was "consistent with the existence of jurisdiction in state courts to enforce criminal penalties and common-law liabilities generally" but that it would be inconsistent to say that "without express mention of it Congress abolishes all common-law rights to recover damages" (347 U. S. at 666).

It is interesting to note that the Court acted advisedly in not placing the *Laburnum* decision on the narrow basis claimed by petitioners. Counsel for Laburnum Construction Corporation in their brief in that case suggested the exact theory advanced by petitioners here,¹⁹ but the Court deemed it appropriate to rest the decision on the broader, sounder ground so persuasively and logically stated in the opinion to the effect that Congress did not intend to eliminate common-law actions to recover damages for tortious conduct, though such conduct also constituted an unfair labor practice.

One of the most important statements in the *Laburnum* opinion is this:

¹⁹ Brief of Respondent in the *Laburnum* case, pages 11-12, summarized part of the argument as follows:

"The subject of this proceeding is not the wrong to the employees, but the right of a company to conduct its business in a peaceful manner free from violence and unlawful interference."

"The Labor Management Relations Act of 1947 is not concerned with this right and therefore cannot be said to have eliminated it."

"Even if Petitioners' acts were unfair labor practices within the intent of section 8 (b) (1) (A) as to Laburnum's employees, they were not unfair labor practices to Laburnum, the only plaintiff in this case. The rights of Laburnum are not within the intent or the language of the Act and the states are free to apply their own remedy for the damages caused by Petitioners."

"The language declaring the congressional policy against such practices is phrased in terms of their prevention:

[Quotation of section 10 (a) omitted.]

"Section 10 (c) directs the Board to issue a cease-and-desist order after an appropriate finding of fact. There is no declaration that this procedure is to be exclusive" (347 U. S., at 667).

Laburnum Construction Corporation Had an Administrative Remedy.

The fallacy of petitioners' attempted distinction readily appears from the consideration that Laburnum Construction Corporation could have availed itself of an administrative remedy under the Act, even though it was an employer. Any person, whether he be employer, employee or a stranger, whether he be the injured party or a party having no interest whatsoever, and irrespective of his motive, can file a charge that an unfair labor practice has been committed and thereby put in motion the investigative and preventive machinery of the Board.²⁰ Laburnum Construction Corporation in the situation with which it was confronted, could have put in motion the preventive procedure of the Board to require the labor organization which was coercing and intimidating its employees to cease and desist from such unfair labor practice. Mr. Justice Douglas pointed this out in his dissenting opinion in *United Auto-*

²⁰ 29 U. S. C., § 160 (b); National Labor Relations Board, Part 102—Rules and Regulations, Series 6, § 102.9; 29 CFR, 1955 Cum. Supp., § 102.9; *Local Union No. 25 of International Brotherhood of Teamsters v. New York, New Haven & H. R. Company*, 350 U. S. 155; *National Labor Relations Board v. Indiana & Michigan Electric Company*, 318 U. S. 9, 17-19; *National Labor Relations Board v. Fulton Bag & Cotton Mills*, 10 Cir., 180 F. 2d 68, 70-71; *National Labor Relations Board v. General Shoe Corporation*, 6 Cir., 192 F. 2d 504, 505; *Duro Test Corporation*, 81 N. J. R. B. 976.

mobile, Aircraft and Agricultural Implement Workers of America v. Wisconsin Employment Relations Board and Kohler Company, 351 U. S. 266, at 275, where in referring to the *Laburnum* case he wrote:

"We there are allowed a common-law tort action for damages to be enforced in a state court for the same acts that could have been the basis for administrative relief under the Federal Act."

The reports of the decisions of the Board are full of instances in which employers have invoked the jurisdiction of the Board to protect their employees from the violent and coercive unfair labor practices condemned in section 8 (b) (1) (A) of the Act.²¹

Rights of Employer Are Protected by Act.

Petitioners blind themselves to reality when they say that section 8 (b) (1) (A) as related to section 7 of the Act protects the rights of employees only. It is a very valuable right of an employer for his employees to have unimpeded access to their place of employment, free from coercion, intimidation and annoyance. That thought was expressed by Mr. Chief Justice Taft in *American Steel Foundries v. Tri-City Central Trades Council*, 257 U. S. 184, at 204, in which, in speaking of annoyance, intimidation and obstruction, he said:

"* * * From all of this the person (employee) sought to be influenced has a right to be free and his employer has a right to have him free." (Emphasis and parenthesis supplied.)

²¹ A few illustrations are: *Sunset Line & Twine Co.*, 79 N. L. R. B. 1487; *Perry Norwell Company*, 80 N. L. R. B. 225; *United Furniture Workers of America*, 81 N. L. R. B. 886; *Colonial Hardwood Flooring Company*, 84 N. L. R. B. 563; *Cory Corporation*, 84 N. L. R. B. 972; *Fairmount Construction Company*, 95 N. L. R. B. 969.

A quarter of a century later, in the United States Senate the son of that Chief Justice, speaking specifically on the subject of the amendment which became section 8 (b) (1) (A) of the Act and which was designed in part to protect an employee from annoyance and intimidation and obstruction of his right of access to his place of employment, pointed out that such right of the employee redounds to the benefit of the employer, saying:

"Mr. President, the amendment is founded on what I consider to be the basic theory of the entire bill, that is, an attempt to create equality between the employer and the employee. If anyone can point to anything in the bill which would impose on the labor union something not imposed upon the employer, certainly I would be in favor of amending it to create equality." (2 Leg. Hist., Labor Management Relations Act, 1947, p. 1206.)

And so, while sections 7 and 8 (b) (1) (A) are couched in terms of employee rights and restraint of such rights, Congress was in those sections also protecting the right of the employer to have his employees free from restraint and coercion.

Comparative Violence.

The petitioners make a last effort to avoid the impact of the *Laburnum* case by speculating "that the Court would have reached a different conclusion in the *Laburnum* case had the union conduct in the case involved borderline activity * * * rather than extreme violence", and by saying that the "instant case involves at most a voluntary mass demonstration to show support by employees." Petitioners' Brief, page 44. In other words, the petitioners say they were not so bad as the construction workers. We have stated enough of the evidence in this case to shew that petitioners characterize their conduct in exceedingly mild terms. Unquestionably their conduct carried with

it a serious threat and was effective to completely seal off the plant to production and maintenance workers. Their conduct was fraught with enough danger to convince the duly constituted authorities that approximately 75 state highway patrolmen and 20 city policemen were necessary to control it. The defendants cannot escape responsibility on any doctrine of comparative violence.

The Kohler Case.

United Automobile, Aircraft and Agricultural Implement Workers of America v. Wisconsin Employment Relations Board and Kohler Company, 351 U. S. 266, gave effect to the congressional intent that there be no curtailment of state jurisdiction over force and violence, even though to do so required the holding that the state could duplicate the preventive power of the Board. Notwithstanding the potential conflict between the state and federal procedures and remedies, the Court sustained the state action because that was so clearly demanded by the congressional will. The focal point of the decision is expressed in this manner:

“It seems obvious that § 8 (b) (1) was not to be the exclusive method of controlling violence even against employees, much less violence interfering with others approaching an area where a strike was in progress.”
(351 U. S. at 272; emphasis supplied.)

Furthermore, the Court rejected the contention that the references to state power in the congressional debate pertained only to state criminal laws against violence and coercion.²²

The breadth of the opinion in the *Kohler* case is shown by this passage:

“There is no reason to re-examine the opinions in which this Court has dealt with problems involving

²² 351 U. S. at 273.

federal-state jurisdiction over industrial controversies. They have been adequately summarized in *Weber v. Anheuser-Busch, Inc.*, 348 U. S. 468, 474-477, 75 S. Ct. 480, 484-486, 99 L. ed. 546. As a general matter we have held that a State may not, in the furtherance of its public policy, enjoin conduct which has been made an "unfair labor practice" under the federal Statutes.' Id., 348 U. S. at page 475, 75 S. Ct. at page 485, and cases cited. But our post-Taft-Hartley opinions have made it clear that this general rule does not take from the States power to prevent mass picketing, violence, and overt threats of violence. The dominant interest of the State in preventing violence and property damage cannot be questioned. It is a matter of genuine local concern. Nor should the fact that a union commits a federal unfair labor practice while engaging in violent conduct prevent States from taking steps to stop the violence." (351 U. S. at 274.)

Decisions Involving Peaceful Conduct.

The importance which the Court has attached to the nature of the union conduct also appears from its opinions in cases concerned with peaceful conduct. For instance, in *Garner v. Teamsters Union*, 346 U. S. 485, at 488, the Court was careful to point out:

" * * * Nor is this a case of mass picketing, threatening of employees, obstructing streets and highways, or picketing homes."

Likewise in *Weber v. Anheuser-Busch, Inc.*, 348 U. S. 468 at 481-482, the Court called attention to an ambiguity in the decree of the state court as to whether the "conduct amounted to the kind of mass picketing and overt threats of violence which under the Allen-Bradley Local case give the state court jurisdiction".

Board Lacks Jurisdiction To Award Damages.

In order to give any semblance of plausibility to their argument, petitioners must and do contend that the National Labor Relations Board has power and jurisdiction to award damages to an employee who has been prevented from engaging in his occupation by mass picketing, force and violence.

In view of the holding in the *Kohler Company* case that section 8 (b) (1) was not intended to be the exclusive method of dealing with violence, the existence of such alleged power of the Board to award back pay to an employee injured by a violation of that section would not oust the jurisdiction of the state court.

Aside from this, contentions that it has power to award damages in cases identical to this case have been consistently rejected by the Board.²³ This administrative

²³ *Colonial Hardwood Flooring Company*, 84 N. L. R. B. 563; *United Mine Workers*, 92 N. L. R. B. 916; *Local 982, United Brotherhood of Carpenters*, 115 N. L. R. B. 1123; *United Electrical, Radio & Machine Workers; Local 1412*, 95 N. L. R. B. 391. And see *National Maritime Union of America*, 78 N. L. R. B. 971, which contains an excellent discussion of the question, and points out the view entertained by the Congress during its consideration of the Act that the Congress regarded the Board as a tribunal without jurisdiction to adjudicate claims for damages, compensatory or punitive. The disclaimer of this jurisdiction by the Board was approved in *Progressive Mine Workers of America v. National Labor Relations Board*, 7 Cir., 187 F. 2d 298, at 307. The reasoning of the Board in *Colonial Hardwood Flooring Company*, *supra*, is not inconsistent with the reasoning of this Court in *Phelps-Dodge Corporation v. N. L. R. B.*, 313 U. S. 177, as is contended; what the Court there wrote was in rejecting the contention that the Board lacked power to order the employer to employ a person who had not theretofore been in its employment because of discrimination in hiring policy, as distinguished from its power to order reinstatement of one once employed, who had been discharged by reason of discrimination. Nor are the above decisions of the Board contrary to *Virginia Electric Power Co. v. N. L. R. B.*, 319 U. S. 533. That was also a discrimination case, and in sustaining the power of the Board to order repayment of union dues withheld for a company-dominated union, the Court likened the order to a back pay order, and expressly forestalled any possible thought that it was "the adjudication of a mass tort" (319 U. S. 533, at 543).

construction of the Act has been acquiesced in by Congress for many years.²⁴

According to petitioners' argument, this alleged power and jurisdiction to award damages flows from the portion of section 10 (e) of the Act, giving the Board authority to require any person guilty of an unfair labor practice to take such affirmative action as will effectuate the policies of the Act. We have heretofore pointed out that any person can file a charge of an unfair labor practice with the Board and can thereby set the machinery of the Board in motion to prevent an unfair labor practice. If the argument which petitioners make is sound, then by the same token, the Board had power and jurisdiction to require the labor organization sued in the *Laburnum* case to pay damages to the Laburnum Construction Corporation, because the Board could just as reasonably determine that such requirement would effectuate the policies of the Act, as would the requirement that a labor organization pay damages to an employee whose right to work has been interfered with. The Court in the *Laburnum* case was in complete disagreement with that concept of such broad and far reaching power and jurisdiction of the Board, as is evidenced by its statement that:

"The Labor Management Relations Act sets up no general compensatory procedure except in such minor supplementary ways as the reinstatement of wrong-

* 24 * * * In any case such interpretations are entitled to great weight. This is peculiarly true here where the interpretations involve contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion * * * * " *United States v. American Trucking Ass'n, Inc.*, 310 U. S. 534, at 549.

"* * * * the practical interpretation of an ambiguous or uncertain statute by the executive department charged with its administration is entitled to the highest respect, and, if acted upon for a number of years, will not be disturbed except for very cogent reasons." *Logan v. Davis*, 233 U. S. 613, at 627.

fully discharged employees with back pay" (347 U. S. at 665).

The petitioners' reliance on the portion of House Report 245, on H. R. 3020, set out on page 49 of their brief, one of their rare references to legislative history, is founded in error. The sentence of that report on which they rely, namely, "Under this clause the Board may also require a union to reimburse an employee whom it causes to lose pay the amount he loses," had reference to discrimination cases where the union caused the employer to discharge the employee, and could not have been speaking of the liability of a union on account of violent interference with his right of ingress to his place of employment because, as we have seen, pages 34-36, supra, section 12 (b) of H. R. 3020, as reported by the House Committee on Education and Labor, provided an action for damages for that type of conduct in the district courts of the United States without regard to the amount in controversy.

Not only does the legislative history of the Act not support petitioners in their contention as to the jurisdiction of the Board, but on the contrary it shows, both by what was said, and, probably more convincingly, by what was not said, that there was no intention to confer such power on the Board.

In the debate on Senator Ball's amendment which became section 8 (b) (1) (A), Senator Pepper contended that the amendment would create too great possibility of abuse and that there would be numerous unfounded charges of unfair labor practices which the unions would have to defend against. Senator Taft replied to Senator Pepper and gave his idea of the consequences of a charge of the particular unfair labor practice dealt with in the proposed amendment. He said:

"There will be a hearing as to why they were doing these things, and a cease-and-desist order may be

issued. So far as I know, there is no other penalty. If they should disobey the cease-and-desist order, the Board can obtain an injunction; and if they violate the injunction, they are liable for contempt. That is the *only* result of this general charge of unfair labor practices." (Emphasis supplied; 2 Leg. Hist., Labor Management Relations Act, 1947, p. 1027.)

In a later discussion of this amendment, Senator Taft illustrated by supposing a case of mass picketing preventing employees from entering the plant. He described in detail the procedure by which the Board would handle a charge of unfair labor practice in that situation. What he said is quoted in footnote 13, page 31 of petitioners' brief, and also appears at 2 Leg. Hist., Labor Management Relations Act, 1947, p. 1205.

It is significant that in neither of these statements did Senator Taft refer to any possibility of the Board ordering the employees reimbursed for wages lost by reason of interference with their right of ingress by force and violence, and it is obvious that it never occurred to him that the Board would have power to order the union to compensate employees in that situation.

In all of the frequent reference made in the congressional debate to union violence and mass picketing there is not one statement, or suggestion, or even intimation, that we have found, that the Board was being given power to require a union to compensate an employee for loss of wages sustained by reason of that type of conduct. On the other hand, there is the specific statement (*supra*, page 35) in House Conference Report No. 510 on H. R. 3020, p. 42, that unions were suable and liable for that type of conduct under ordinary principles of law. Furthermore, House Conference Report No. 510, at page 54, recognizes that the authority of the Board to require a labor organization to pay back pay to employees was applicable only

where the employees had suffered discrimination, and also shows that, at least in the opinion of the conferees, express language in the Act so providing was necessary to empower the Board to require a union to pay back pay. For instance, it was said in the report:

"The Senate amendment did not contain the provision specifically authorizing the Board to deprive representatives and employees who engage in unfair practices of rights under the act, but did contain a provision authorizing the Board to require a labor organization to pay back pay to employees when the labor organization was responsible for *the discrimination* suffered by the employees."

The House bill, by implication, limited the Board in its choice of remedial orders in cases of unfair labor practices by representatives not involving back pay, by specifying but one type of order that the Board might issue. The conference agreement therefore omits this provision of the House bill. As previously stated, employees are subject to the prohibitions of section 8 (b) only when they act as agents of representatives, but in these and other cases, when they are disciplined or discharged for engaging in or supporting unfair practices, they do not have immunity under section 7. The language in the Senate amendment *without which the Board could not require unions to pay back pay* when they induce an employer to discriminate against an employee is included in the conference agreement." (Emphasis supplied; 1 Leg. Hist., Labor Management Relations Act, 1947, p. 558.)

From the foregoing it appears that the answer to petitioners' query as to why the Board should have power to require the union to reimburse an employee for wages lost by reason of discrimination, but not where the loss was caused by force or violence, is simply that Congress

did not so intend in the latter case but intended the common-law remedy to obtain.

If we turn to the common law in search of a reason why Congress conferred power on the Board to require a union to pay back pay in discrimination cases, but not in forceful and violent interference with the right of ingress to the place of work, we find that in the case of interference by force and violence the common law provided an adequate remedy, but that in discrimination cases in some jurisdictions it provided no remedy at all. Annot., 29 A. L. R. 532, at 543-547.

Plaintiff's Given Charge Nine.

It is not clear from petitioners' brief whether or not they claim a reversal should result because of alleged error in the giving of plaintiff's requested charge 9 which is set forth in footnote 8 at page 14 of their brief, and is referred to again on page 61 of their brief. They say in passing, that this charge "deprived them of their Federally protected right to strike, by permitting the jury to return an award of damages solely upon a finding that excessive picketing was engaged in, without the necessity of finding that work would have been available to Respondent during the Federally protected strike engaged in by the great majority of the employees."

Assuming contrary to the holding of the Supreme Court of Alabama, that the charge should be construed to have that meaning, it did not deprive the petitioners of the federal right to strike, or to picket, or in any manner affect or detract from those rights. Indeed, charge 9 expressly states that picketing is lawful, and it directs a verdict for the plaintiff only on the hypothesis of the jury being reasonably satisfied from the evidence that the defendants stationed pickets on a public street as alleged in the complaint, for the purpose of preventing the plain-

tiff from entering his place of employment by means of intimidation, threats, coercion, force or violence, and that the plaintiff was thereby denied access to his place of employment. The defendants had no right, federal or otherwise, to engage in such unlawful picketing. Therefore, the charge could not possibly have deprived them of the federally protected right to strike or to picket peacefully.

Aside from the above, the Supreme Court of Alabama was correct in its holding that charge 9 should not be construed so as to authorize a verdict for plaintiff without a finding that work was available to him, and that he lost work by reason of the unlawful picketing. The term, "place of employment", connotes work. The idea conveyed by the expression that the purpose of the pickets was to prevent plaintiff from entering his place of employment, and that he was denied access to his place of employment, was that he was prevented from working. There naturally would have been no reason for the pickets to have prevented plaintiff from entering his place of employment unless work was available to him, and no reason for plaintiff to have wanted to enter except for the purpose of working. Especially is this the reasonable construction of charge 9 when it is considered in the light of the oral charge and the petitioners' given written charges numbered 5, 6, 10 and 11 (R. 623, 639-641). Charges 5 and 6 are illustrative, and are respectively:

"5. I charge you that unless you are reasonably satisfied from the evidence in this case that the proximate cause of plaintiff's inability to work at the Decatur plant of Calumet and Hecla Consolidated Copper Company (Wolverine Tube Division) during the period from July 18, 1951, to August 22, 1951, was that a picket line was conducted by the defendants in a manner which by force and violence, or threats of force and violence prevented plaintiff from entering the plant, and unless you are reasonably sat-

isified from the evidence that work would have been available to plaintiff in the plant during said period, except for picketing in such manner, you should not return a verdict for the plaintiff" (R. 639).

"6. I charge you that unless you are reasonably satisfied from the evidence that the acts complained of by plaintiff occurred, and that the plaintiff suffered a loss of wages as the natural and proximate result of said acts, you should return your verdict for the defendants" (R. 639).

The Supreme Court of Alabama had good grounds for its conclusion that charge 9 was not erroneous when reasonably construed because it is elementary that written instructions are to be construed in connection with each other and with the oral charge of the court.²⁵

Reason and Justice Support the Judgment.

The defendants' conduct was wrongful and the plaintiff was damaged as a consequence of it. That was established by the verdict.

The maintenance of any action such as this does not and cannot interfere with any function of the Board.

The judgment below does not deprive the petitioners of any right guaranteed to or conferred upon them by the Act. They were accorded their right to strike and their right to picket peacefully.

²⁵ Such is the holding of the two cases cited by the Supreme Court of Alabama in that connection, namely, *Birmingham Southern Railway Company v. Harrison*, 203 Ala. 284, 82 So. 534; *Alabama Consolidated Coal & Iron Co. v. Heald*, 171 Ala. 263, 55 So. 181; and also *Lehigh Portland Cement Co. v. Donaldson*, 231 Ala. 242, 164 So. 97; *McGough Bakeries Corp. v. Reynolds*, 250 Ala. 592, 35 So. 2d 332; *Marbury Lumber Co. v. Lamont*, 198 Ala. 566, 73 So. 923; *Western Union Telegraph Co. v. Gorman*, 237 Ala. 146, 185 So. 743; *Scarpulla v. Giardina*, 209 Ala. 550, 96 So. 593.

The opinion in this case will rule similar ones where injuries may be more serious and may consist of broken bones, damaged automobiles, and even death. Suppose the plaintiff had not exercised self-restraint and had tried to force his way into the plant and his car had been overturned and damaged and he had suffered a broken arm and permanent injury. Or, to explore the question further, suppose he had received an injury resulting in death. That does sometimes occur as a result of force and violence in industrial strife. Would it be contended in an action by plaintiff for lost wages and personal injury and property damage in the case first hypothesized, or in an action by his widow in the second for his wrongful death, that the exclusive remedy lay with the Board? If not, what is the difference? Is the principle not the same? What difference should it make that an element of damage is a broken arm rather than a broken spirit? The complaint here claims damages for mental pain and anguish which, it has been said, are "actual damages in the same sense that damages for the loss of an eye, an arm, or a foot are actual damages."²⁶

The defendants can avoid judgments such as this by limiting their picketing to peaceful picketing, and by refraining from blocking streets and entrances to plants by mass picketing and by the use of force, violence and intimidation. If petitioners will limit picketing to peaceful picketing, they will not be required to defend against actions such as this by an employee to vindicate his rights which were violated by their illegal picketing. If petitioners will respect the law and the rights of others, it will not be necessary that 75 highway patrolmen and 20 city policemen be diverted from their customary duties in order to preserve law and order and to keep the street open, as was necessary in this case when it became apparent

²⁶ *Birmingham Railway, Light and Power Company v. Coleman*, 181 Ala. 478, at 485, 61 So. 800.

that local law enforcement officers were unable to cope with the situation.

Many states have laws prohibiting the use of force or violence, or the threat thereof, to prevent any person from engaging in a lawful occupation.²⁷ Counsel for petitioners has heretofore conceded that the Act does not bar the states from punishing picket line violence by criminal prosecution.²⁸ This concession is not consistent with the argument here that a state court and jury is not competent to adjudicate the issues of this case, and that there will be varied interpretations and results in the numerous state courts. The issues in criminal prosecutions will be much the same as the principal issue here.

One of the chief reasons petitioners advance against the right to maintain actions such as this, is that the fear of staggering punitive damages will restrict the exercise of the federal right to strike and to picket. They say that Alabama is thereby "regulating" labor relation matters. Even if that were true, we have seen from the *Kohler* case from legislative history that Congress intended exactly that. Congress intended to leave intact all the sanctions a state could employ against force and violence.

Punitive damages serve much the same purpose as a criminal prosecution, and are allowed in order to punish the defendants for wrongful conduct and to set an example to deter the commission of similar wrongs in the future. The power to award punitive damages is vested in a jury for the public good. The law authorizing punitive damages

²⁷ See, e. g., General Acts of Alabama, 1943, p. 256, §§ 9, 18; Code of Alabama, 1940, Supp. Tit. 26, §§ 384, 393.

²⁸ "Appellant concedes that a State may punish violence arising in labor relation controversies under its generally applicable criminal statutes." *Kohler* case, 351 U. S. at 268.

grows out of the concept that every human being is entitled to be free from indignities at the hands of those having no respect for the feelings and rights of their fellows. The power to award punitive damages constitutes the jury an effective instrument of government with the discretion to diminish the purse of those who violate the canons of proper behavior. It restrains malicious, wanton, fraudulent and willful misconduct; it vindicates the rights of the wronged; it discourages private reprisals, and, instead, encourages resort to, respect for, and confidence in, the courts as the appropriate instruments for the vindication of rights which have been violated. It constitutes a powerful and effective deterrent to oppression and wrongdoing which the criminal law is not always adequate to prevent. It is one of our valuable heritages from the wisdom of the common law. Concerning wrongful conduct, such as is now being considered, substantial awards of punitive damages will uphold the majesty and power of the law, while a criminal prosecution of the defendants for a misdemeanor would be wholly impotent and ineffective.

It is also to the interest of labor organizations that they be responsible for their torts. More than fifty years ago, before he was elevated to the bench, Mr. Louis D. Brandeis, in a debate with Mr. Samuel Gompers before the Economic Club of Boston, took the affirmative of the issue, whether labor unions should be incorporated, and pointed out the difficulty of reaching the funds of a union by legal proceedings. In speaking of that difficulty, he said this:

"But while the rules of legal liability apply fully to the unions, though unincorporated, it is, as a practical matter, more difficult for the plaintiff to conduct the litigation, and it is particularly difficult to reach the funds of the union with which to satisfy any judgment that may be recovered. There has consequently

arisen not a legal, but a practical, immunity of the unions, as such, for any wrongs committed.

"This is deemed by many labor leaders a great advantage. To me it appears to be just the reverse. It tends to make members and officers reckless and lawless, and thereby to alienate public sympathy and bring failure. It creates on the part of the employers, on the other hand, a bitter antagonism, not so much on account of lawless acts as from a deep-rooted sense of injustice, arising from the feeling that the union holds a position of legal irresponsibility."

"It has been objected by some labor leaders that incorporation of the unions would expose the funds collected as insurance to loss by reason of claims made for wrongs committed by the union. The amount of such claims recovered in any judgments would doubtless be small, but I could conceive of no money expended by a union which could bring so large a return as the payment of compensation by it for some wrong actually committed. Such payment would serve to curb the officers and members of the union from transgression of the law, but it would, above all, establish the position of the union as a responsible agent in the community, ready to abide by the law."²⁹

An adequate remedy should exist to redress torts committed in labor relation controversies. Chief Justice Marshall in *Marbury v. Madison*, 1 Cranch. 137, at 163, wrote:

"The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws whenever he receives an injury. One of the first duties of government is to afford that protection." * * *

²⁹ The Boston Herald, December 5, 1902, p. 1, col. 4, and p. 2, col. 4; see also remarks of Senator H. Alexander Smith, 2 Leg. Hist., Labor Management Relations Act, 1947, p. 1146.

"The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation if the laws furnish no remedy for the violation of a vested legal right."

Petitioners, in effect, are asking this Court to grant them immunity from liability for their torts. But legal accountability for wrongful conduct is one of the cornerstones of the common law; it is a sobering reminder to refrain. That is one of the virtues of the verdict and judgment here.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

◆◆◆
No. 21
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INTERNATIONAL UNION, UNITED AUTOMOBILE,
AIRCRAFT AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW-CIO),

An Unincorporated Labor Organization,
and MICHAEL VOLK, An Individual,

Petitioners,

vs.

PAUL S. RUSSELL,
Respondent

● ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF ALABAMA.

REPLY BRIEF AND APPENDIX FOR PETITIONERS

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and MICHAEL VOLK, An Individual,

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vs.

PAUL S. RUSSELL,
Respondent

—
ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF ALABAMA

REPLY BRIEF FOR PETITIONERS

—
I.

NO IMMUNITY FROM LIABILITY

The technique employed by Respondent in his brief is to set up a number of straw men (propositions not contended for by Petitioners) and then to proceed to knock these down with great vigor. This is true, for example, of most of the discussion relating to the *Laburnum* case contained in Respondent's brief.

In addition, Respondent asserts that Petitioners are asking this Court to grant them immunity from liability for their torts (Brief of Respondent, page 59).

We do not here contend that a State court cannot award damages because of physical assault and injuries, including a loss of wages incurred because of inability to attend work on account of the physical injuries; we do not here contend that it cannot compensate for damages to an automobile; and we do not here contend that the State cannot maintain public peace and order by the exercise of its police powers through injunctions or criminal statutes. State jurisdiction in all of these matters exists and can be exercised independently and separately from a labor relations background.

We contend only that the protection of the right to engage in concerted activities, including the right to strike and to picket, and, the protection of the right to refrain from any of these activities, including the right to work during a strike, have been delegated exclusively to the National Labor Relations Board.

Respondent's assertion that Petitioners are asking this Court to grant them immunity from liability is refuted by Argument F, pages 45-56, and Appendix D of Petitioners' brief, in which it is shown that, under judicial precedent and the legislative history, the National Labor Relations Board has authority to award back pay to employees whose right to work is interfered with during a strike by restraint or coercion.

We do not believe that it is necessary for the Court to reach or decide this question but we do assert that the power of the Board to enter remedial reparation orders extends to any type of affirmative relief designed to effectuate the policies of the Act.

To the presentation of judicial precedents and legislative history contained in Petitioners' Brief and set forth in the opinion of Board Member Reynolds in Appendix D, we add the words of Senator Hatch, reiterating the intention of the Senate¹ as to the remedial authority of the Board:

"The amendments of Section 10 (e) authorizing the Board to charge unions with back pay in the event the union is guilty of an unfair labor practice, seem fair enough, although I anticipate some difficulty on the Board's part in assigning responsibility for the initiation of strikes in many cases." (93 Cong. Rec. 5137.)

II.

VIOLENCE CANNOT BE THE CRITERION NEGATING FEDERAL PREEMPTION

Respondent would have the Court decide that a mere allegation of actual or threatened violence in State court pleadings opens the door for any action the State court may wish to take even though it affects labor relations and rights of employees affecting interstate commerce.²

To sustain this position, he cites quotations from the legislative history indicating that Congress did not in-

¹ The meaning of Section 10 (e) is explained by both House Report 245 and Senate Report 105, 80th Cong., 1st Sess. See Appendices to Petitioners' Brief, pages 31a, 32a.

² As authority for the proposition that common law rights are not repealed by implication, Respondent cites *Texas & Pacific R. R. v. Abilene Cotton Oil Co.*, 204 U. S. 426 and *Isbrandsten Co. v. Johnson*, 343 U. S. 779. In both of these cases the Court held, just as it has uniformly held in its decisions construing the Taft-Hartley Act, that giving effect to State common law rights would defeat Congressional aims of uniformity.

tend to prevent the exercise of the police power of the states to maintain public peace and order. For instance:

"Senator Ball * * *: * * * such practices (double initiation fees) do not fall within the purview of State Laws against violence * * *.

"‘scurrilous remarks * * * and all kinds of abuse, even verging on physical violence, but very often not reaching the point where State law would come into effect.’” Brief of Respondent, p. 30.

"Senator Ives * * *: * * * offenses of this type (violence and physical coercion) are punishable under State and local police law.'” *Ibid.*, p. 31.

"Senator Taft * * *: * * * suppose there is duplication in *extreme cases*; suppose there is a threat of violence constituting *violation* of the law of the State.'” *Ibid.*, p. 31. (Emphasis added.)

"Senator Taft * * *: * * * Of course if *administrative law fails*, it would be necessary finally to resort to *police power* of the States.'” *Ibid.*, p. 32. (Emphasis added.)

"Senator Taft * * *: * * * It will duplicate some of the State laws *only* to the extent, as I see it, that *actual violence* is involved either in the threat or in the operation * * *.

* * * * Secondary boycotts, jurisdictional strikes, and so forth, may involve some violation of State law respecting violence *which may be criminal*, and so to some extent the measure may be duplicating the remedy existing under State law.'” *Ibid.*, pp. 33-34. (Emphasis added.)

Thus, all of the quotations relied upon by Respondent either refer to types of coercion not reached by State law, or to the exercise solely of the police power of the State to control the public peace and order. While the Court

is thoroughly familiar with this aspect of the legislative history, the Appendix to this Reply Brief contains excerpts from the legislative history which show that Congress intended to preempt the field covered by the Act, that only the police power to maintain public peace and order was intended to be left to the States, and that Congress considered and specifically rejected the "court approach" to the protection of employee rights and, instead, adopted the "administrative-law approach."

The last factor deserves brief comment here. H. R. 3020 in Section 12 provided for private court suits by employees for invasions of their right to work. The Conference Committee rejected this and recommended the amended Section 7 and Section 8 (b) (1) as the means of protecting these rights. Congressmen Hartley and Halleck assured the House that the administrative procedure provided would be "effective." 93 Cong. Rec. 6540, 6548; See Appendix, *infra*, House Debate. Both houses of Congress endorsed the retention of the administrative law approach and the conference bill was adopted. House Conference Report 510 accentuates the fact that it was intended that the Board should decide the merits of claims concerning invasions of employee rights (as distinguished from summary police power measures) saying: "Then, too, under the provisions of Section 10 (k) of the conference agreement the Board can seek a temporary injunction enjoining these practices pending its decision on the merits."³

³ Respondent's Brief at pages 35-36 quotes, out of context, a passage from Conference Report 510 but significantly omits this sentence, which immediately follows, in the same paragraph, the passage quoted by Respondent. The reference in the Conference Report to Section 302 (b), relied upon by Respondents, standing alone, is non-sensical, as Section

H. R. Conf. Rept. 510, 80th Cong., 1st Sess. 546-547. (Emphasis added.)

As this Court pointed out in *Amalgamated Association of Street, Electric Ry., etc., Employees v. W. E. R. B.*, 340 U. S. 383, 390, by these provisions Congress "saw fit to regulate *labor relations* to the full extent of its constitutional power." It defined the protection of "the rights of individual employees in their relations with labor organizations" as a legitimate subject of *labor relations*. 29 U. S. C. 141 (b). (Emphasis added.)

(Continued from preceding page)

302 (b) refers to payments to labor organizations, Section 301 refers to breach of contract suits and Section 303 refers to secondary boycott and jurisdictional strike actions. Furthermore, considered in the light of the sentence omitted by Respondent and here quoted, and in the light of the explanations of Congressmen Hartley and Halleck, text *supra*, it becomes apparent that the reference to Section 302 (b) is erroneous and meaningless.

Respondent also contends (Respondent's Brief, p. 35) that the elimination of the word "exclusive" from Section 10 (a), with reference to the power of the Board to remedy unfair labor practices, is an indication that Congress intended that unfair labor practices could be remedied by private court action and cites a partial passage from House Conference Report 510, 80th Cong., 1st Sess., 52. The entire quote, which was lucidly held in *Amazon Cotton Mills Co. v. NLRB.*, 167 F. 2d 183 (C. A. 4), not to have this effect, is as follows:

"The House bill omitted from section 10 (a) of the existing law the language providing that the Board's power to deal with unfair labor practices should not be affected by other means of adjustment or prevention, but it retained the language of the present act which makes the Board's jurisdiction exclusive. The Senate amendment, because of its provisions authorizing temporary injunctions enjoining alleged unfair labor practices and because of its provisions making unions suable, omitted the language giving the Board exclusive jurisdiction of unfair labor practices, but retained that which provides that the Board's power shall not be affected by other means of adjustment or prevention. The conference agreement adopts the provisions of the Senate amendment by retaining language which provides the Board's powers under section 10 shall not be affected by other means of adjustment. The conference agreement makes clear that, when two remedies exist, one before the Board and one before the courts, the remedy before the Board shall be in addition to, and not in lieu of, other remedies." (Emphasis added.)

If a mere allegation of actual or threatened violence in state court pleadings will invest the state court with blanket authority to take any regulatory action it sees fit, the state court is hereby authorized to regulate labor relations and to invade the exclusive province of the National Labor Relations Board. Moreover, state court jurisdiction cannot be made to depend upon the degree of actual or threatened violence, as such a criterion is too vague and uncertain. One state court might hold that a casual comment of "scab" was coercive. Another might hold that actual physical injury was necessary as a basis for its jurisdiction. Thus the object of uniformity and equality in *labor relations* sought to be attained by Congress would be defeated. This aim of uniformity is not dependent upon the degree of misconduct involved.

Solely by giving to the congressional history its natural intendment, and by adhering to the precedents already established by the Court,⁴ that only the exercise of the *police power* to maintain public peace and order remains to the States, can the Congressional objective of uniformity and equality in *labor relations* be attained.

III.

CRITERIA OF PREEMPTION RESTATED

Violence, therefore, cannot be the criterion which negates preemption. The true test of preemption is not so simple. Its criteria are present, however, where Congress, having jurisdiction, has defined and guaranteed correlative and interbalancing rights, has established the aim of uniformity and equality in the protection of the rights, and has in-

⁴ *United Automobile Workers v. O'Brien*, 339 U. S. 454; *Bus Drivers v. W. E. R. B.*, 340 U. S. 383; *Garner v. Teamsters Union*, 346 U. S. 485; *United Automobile Workers v. Kohler Co.*, 351 U. S. 266.

vested an administrative authority with the power and jurisdiction to administer the rights and redress invasions of them to the end of uniformity and equality. In such a case uniformity cannot be attained in a multiplicity of tribunals and the administrative procedures provided must be held to be exclusive.

The evidence and the charges given to the jury by the trial court demonstrate that this case involves solely the interbalancing of employee rights guaranteed by the National Labor Relations Act, as amended, and that the interpretation and protection of these Federal rights have here been committed to a trial court jury.

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APPENDIX TO REPLY BRIEF

ADDITIONAL INDICIA FROM LEGISLATIVE HISTORY AS TO INTENT OF CONGRESS

I.

SCOPE OF THE LEGISLATION

I. Scope of the legislation—That Congress intended the Taft-Hartley Act should be a comprehensive code of *labor relations* is best indicated in the Act's preamble (29 U. S. C. §141 (b)), which declares that it is the:

“purpose and policy of this chapter . . . to prescribe the legitimate rights of both employee's and employers in their relations affecting commerce, *to provide orderly and peaceful procedures* for preventing the interference by either with the legitimate rights of the other, *to protect the rights of individual employees in their relations with labor organizations* whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and *to protect the rights of the public in connection with labor disputes affecting commerce.*” (Emphasis added.)

Concerning the effect of these statements of purpose, House Report 245, 80th Cong., 1st Sess. (1947), says at page 44:

“by the Labor Act Congress preempts the field that the Act covers insofar as commerce within the meaning of the Act is concerned.”

"Since the N. L. R. B. was given jurisdiction to enforce the rights of the employees, it was clear that the Federal Act had occupied this field to the exclusion of State regulation." *Amalgamated Association of Street, Electric Railway, etc. Employees v. Wisconsin Employment Relations Board*, 340 U. S. 383, 390, note 12.

II.

ONLY THE POLICE FUNCTION WAS INTENDED TO BE LEFT TO THE STATES.

II. Only the Police Function Was Intended to be left to the States.—"Congress saw fit to regulate labor relations to the full extent of its constitutional power" (*Bus Drivers Case, supra*, 340 U. S. at page 390), and intended that only the police function—the maintenance of public peace and order—should remain to the states insofar as strikes affecting interstate commerce are concerned. This fact is indicated by the following excerpts from the legislative history.

A. Committee Reports

H. R. Rep. 245, 80th Cong. 1st Sess. 6 (1947), says of H. R. 3020:

"(12) It outlaws mass picketing and other forms of violence designed to prevent individuals from entering or leaving a place of employment."

This feature of the bill was objected to in House Minority Report 245, at page 84, as follows:

"The effective remedy to such offenses must be a summary one. Arrest, criminal trial, fine or imprisonment upon conviction. An administrative hearing followed some months or years later by a cease-and-desist order or deprivations of all rights

under the Act would be useless. The remedy would not only be slow, but would seek to apply the administrative techniques of a *remedial* statute to offenses that call for a policeman. (Emphasis added.)

"We assert that Congress should not consider the impractical suggestion that the Federal Government take over local police functions."

In their Supplemental Views contained in Senate Report 105 on S. 1126, 80th Cong., 1st Sess. (1947), at page 50, Senators Taft, Ball, Donnell and Jenner expressed the following view which was ultimately incorporated in the Senate bill by the Ball amendment:

"The committee heard many instances of union coercion of employees such as that brought about by threats of reprisal against employees and their families in the course of organizing campaigns; also direct interference by mass picketing and other violence. Some of these acts are illegal under State law, but we see no reason why they should not also constitute unfair labor practices to be investigated by the National Labor Relations Board, and at least deprive the violators of any protection furnished by the Wagner Act. We believe that the freedom of the individual workman should be protected from duress by the union as well as from duress by the employer."

Explaining the provisions of the bill which was reported from the Conference Committee and which was ultimately passed by both houses of Congress, House Conference Report 510 on H. R. 3020, 80th Cong., 1st Sess. (1947), states at pages 543-544:

"That provision (Section 7), as heretofore stated, provides that employees are also to have the right to refrain from joining in concerted activities with their fellow employees if they choose to do so."

Explaining how Section 8 (b) (1) of the Conference bill gave power to the Board to remedy unfair labor practices, as an alternative to the private injunctive and damage suit remedies provided by Section 12 (a) (1) of the original House bill, House Conference Report 510 on H. R. 3020, says at pages 546-547:

"Then, too, under the provisions of Section 10 (k) of the conference agreement the Board can seek a temporary injunction enjoining these practices *pending its decision on the merits.*" (Emphasis added.)

B. House Debate

From the debate in the House on H. R. 3020, the following comments concerning Section 12 (a) (1), which was ultimately replaced by Section 8 (b) (1) appear:

Congressman Hartley: "Eighteenth. The right to go to and from his work without being threatened or molested—Section 12 (a) (1)." (93 Cong. Rec. 3535.)

Congressman McConnell: "This bill seeks to protect the freedom of the individual worker. It attempts to emancipate him from abuses of power by either a labor organization or an employer." (93 Cong. Rec. 3550.)

Congressman Gwinn: "The new Hartley Act now before us for passage changes that and makes all men subject to the law and subject to damages for unlawful, concerted, monopolistic acts to destroy property and to injure persons." (93 Cong. Rec. 3554.)

Congressman Kersten: "The bill centers its attention upon this rank and file worker. It gives him a bill of rights within his own union." (93 Cong. Rec. 3577.)

The conference agreement by Section 8 (b) (1) provided administrative procedures to replace private damage

suits for interference with employee rights. Concerning this, Congressmen Hartley and Halleck made the following explanations:

Hartley: "Just what really basic concessions did the House conferees make? We conceded on the ban in our bill on industry wide bargaining. We conceded on the ban in our bill on welfare funds. We conceded on the question of injunctions to be obtained by private employers and on the provisions making labor organizations subject to the antitrust laws.

"I call your attention to what is left in the bill because I think you are going to find there is more in this bill than may meet the eye and may have been heretofore presented to you. * * * The House conferees were able to obtain Senate agreement to our policy finding. This bill, contrary to reports that have gone out—and the Senate conferees agreed with us on this—does prohibit mass picketing and the use of violence in the conduct of a strike. On that provision we accepted the Senate language which does restrict intimidation and coercion." (93 Cong. Rec. 6540.)

Halleck: "The bill we passed (H. R. 3020) did forbid, and provide remedies for, activities and practices by labor, as well as activities and practices of management, that almost everyone condemns. Among these were * * * violence in strikes, * * *, coercion of employees by unions. * * *.

"These clauses, I am glad to say, still are in the conference report. In form, many of them differ from the form in which they appear in the House bill. But they are in the report now before the House, and in effective form." (93 Cong. Rec. 6548.)

C. Proceedings in the Senate

During the debate in the Senate upon the Ball amendment which added Section 8 (b) (1) to S. 1126 and which was retained in the conference bill, the following colloquy appears:

Mr. Ives: "I desire to say for the Record that right now we have a good National Labor Relations Board; and I think the Senator from Ohio will agree with me in that statement."

Mr. Taft: "I do agree otherwise I would not be willing to grant them the great additional powers we give them in the pending bill."

Mr. Ives: *** * * It will be found that governmental administrative bodies are generally pretty reasonable, and I am sure that it can be definitely said insofar as our present National Labor Relations Board is concerned. They welcome suggestions. They do not think they have the final answer to the questions we are considering. So, when it comes to the technics of administration, the procedures to be followed, I believe firmly that the Congress of the United States, the chief legislative body in America, has a responsibility in this connection. * * *."

Mr. Taft: "I thank the Senator. The mere fact that we create a board to study matters further I do not think is an excuse for not dealing with an amendment as clear as the pending amendment or one which is so obviously necessary to place employers and employees on an equal basis, and protect the rights of employees against both."

Mr. Taft: "*** Mr. President I agree with the Senator from New York that we should draw a line between the things we can do and the things we cannot do. I fully agree with that distinction. I agree that many things that people would like to do are probably impracticable in the labor relations field. But the particular matter we are considering

is not impractical. Merely to require that unions be subject to the same rules that govern employers, and that they do not have the right to interfere with or coerce employees, either their own members or those outside their union, is such a clear matter, and seems to me so easy to determine, that I would hope we would all agree. Just as we have eliminated the unfair labor practices on the part of employers, just as they have been practically stopped by the National Labor Relations Act, I would hope that this process, while slower than direct court action, would bring an absolute end to the practices of which we complain, practices which are testified to, practices which are known to exist.

"Mr. President, I should like to call attention to the fact that the amendment proposed by the Senator from Minnesota (Mr. Ball) is practically contained in the Wisconsin Labor Relations Act and has been used in Wisconsin as a means not only of preventing the coercion of employees but also of attempting, bringing such action as can be brought by administrative law, to end mass picketing. Of course, if administrative law fails, it would be necessary finally to resort to the police powers of the States. * * *

"Mr. President it seems to me that this is a practical amendment, one which is necessary if our theory of equality is to be carried out. * * *." (93 Cong. Rec. 4145-4146.)

During the Senate debate upon the Ball amendment, Senator Morse objected to the passage of Section 8 (b) (1) (A) upon the basis that coercive practices by unions against employees were local police problems and were matters for local criminal laws. (93 Cong. Rec. 4554, 4556). Notwithstanding these objections the amendment was passed. In answer Senator Ball said:

"It is true, as the Senator from Oregon has stated, that some types of union coercion, including the violence of the mass picket line, visits to the homes of employees, * * * and other such tactics are violations of State law in almost every state. I believe that the main remedy for such conditions is *prosecution* under State law and better *local law enforcement*. * * *

"* * * But I think we shall encourage that kind of local law enforcement if the Federal Government, acting through Congress, states clearly its position that individual employees are entitled to their right of self-organization free from coercion from any source, whether it be the employer, the union, or some outside source." (93 Cong. Rec. 4559.) (Emphasis added.)

Senators Saltonstall and Morse interrogated Senator Taft concerning the meaning and effect of Section 8 (b) (1), to which he replied:

"* * * I think, when we get to the case of unions, there might be the actually violent act of forcibly, by mass picketing, preventing a man from working.

"Let us take the case of mass picketing, which absolutely prevents all the office force from going into the office of a plant. That would be a restraint and coercion against those employees, and interference with their right to work * * *.

"The effect of the pending amendment is that the Board may call the union before them, exactly as it has called the employer, and say: 'Here are the rules of the game. You must cease and desist from coercing and restraining the employees who want to work from going to work and earning the money which they are entitled to earn.' The Board may say, 'You can persuade them; you can put up signs, you can conduct any form of propaganda you want in order to persuade them, but you cannot, by threat

of force or threat of economic reprisal, prevent them from exercising their right to work." • • •

"Mr. President, the amendment is founded on what I consider to be the basic theory of the entire bill, that is, an attempt to create equality between the employer and the employee. If anyone can point to anything in the bill which would impose on the labor union something not imposed upon the employer, certainly I would be in favor of amending it to create equality.

"• • • Like the Senator from Minnesota, I am not fond of the administrative procedure, but it is believed that if we retain the unfair labor practice procedure against employers, an effort should be made to bring about some measure of equality by defining unfair labor practices on the part of labor unions. Undoubtedly any such procedure is subject to abuse; but I think it will be largely controlled by court-review provisions. I see no reason to think it is more difficult for the unions than it is for the employer. • • •

"Mr. President, I can see nothing in the pending measure, which, as suggested by the Senator from Oregon, would in some way outlaw strikes. It would outlaw threats against employees. It would not outlaw anybody striking who wanted to strike. It would not prevent anyone using the strike in a legitimate way, conducting peaceful picketing or employing persuasion. All it would do would be to outlaw such restraint and coercion as would prevent people from going to work if they wished to go to work.

"The Senator from Oregon a while ago said that the enactment of this proposed legislation will result in duplication of some of the State laws. It will duplicate some of the State laws *only* to the extent, as I see it, that actual violence is involved in the threat or in the operation.

"Mr. President I may say further that one of the arguments has suggested that in case this provision covered violence it duplicated State law. I wish to point out that the provisions agreed to by the committee covering unfair labor practices on the part of labor unions also might duplicate to some extent that State law. Secondary boycotts, jurisdictional strikes, and so forth, may involve some violation of State law respecting violence which *may be criminal*, and so to some extent the measures may be duplicating the remedy existing under State law. But that, in my opinion, is no valid argument." (93 Cong. Rec. 4563.) (Emphasis added.)

Concerning the differences between S. 1126 and the Conference bill, Senator Taft explained:

"Section 7. In this section guaranteeing the right of employees to self-organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, there has been inserted the language 'and shall also have the right to refrain from any and all of such activities * * *'. The reason for its inclusion was that similar language had appeared in the House bill and since section 8 (b) (1) of the Senate bill, which was retained by the conferees, made it an unfair labor practice for labor organizations to restrain or coerce employees in the rights guaranteed them in Section 7, the House conferees insisted that there be express language in Section 7 which would make the prohibition contained in Section 8 (b) (1) apply to coercive acts of unions against employees who did not wish to join or did not care to participate in a strike or a picket line." (93 Cong. Rec. 7001.)

D. Subsequent History

On several occasions since its passage in 1947, proposals have been made for the amendment or repeal of the Taft-Hartley Act, and it was amended in 1951. However, the provisions of the Act here material remain intact.

In 1949 S. Rep. 99 on the National Labor Relations Act of 1949 (S. 249), 81st Cong., 1st Sess. (1949) proposed repeal of the Act and a minority report proposed amendments. (Minority Views, Part 2, S. Rep. 99 on S. 249). Both failed of passage in the Senate; however, comments of Senator Taft upon the minority proposals shed light upon the understanding of the Senate as to the meaning of the Taft-Hartley Act:

"Mr. Taft: If the amendments which are proposed in the minority views are adopted, we shall have a new bill which still embodies the best features of the Taft-Hartley law. It will contain all the basic principles of equality between employers and employees and the prohibition of unfair labor practices on the part of both. It will impose responsibility on unions equal to the power they now have—and will retain under this bill—including the obligation to bargain collectively, to be liable in court for damages resulting from breach of contract, secondary boycotts and jurisdictional strikes. It will retain all of the important protection given to individual employees against arbitrary union power."

"List of Important Features Retained:

* * *

"3. Unions as well as employers remain responsible on their contracts, and are liable to suit as if they were corporations in the Federal courts. They are also liable for damages caused by secondary boycotts and jurisdictional strikes.

* * *

"5. It remains an unfair labor practice for a union or an employer to coerce employees in such a way as to interfere with their right of organization or their right to work. This prohibits mass picketing." (95 Cong. Rec. 5589.)

* * *

"List of Proposed Changes from the Taft-Hartley Law:

* * *

"7. The responsibility of unions for the restraint of employees is eliminated, but the illegality of coercion of employees in their right to work is reasserted. Section 7 and Section 8 (b) (1)." (95 Cong. Rec. 5590.)

III.

THE ADMINISTRATIVE LAW APPROACH

In enacting the Wagner Act it was the object of Congress "to dispel the confusion resulting from dispersion of authority and to establish a single paramount administrative or quasi-judicial authority in connection with the development of the Federal American law regarding collective bargaining." S. Rep. 573, 74th Cong., 1st Sess., 15.

H. R. 3020 proposed to modify this by making all unfair labor practices the subject of private suits for injunction and damages. H. R. Rep. 245 on H. R. 3020, 80th Cong., 1st Sess. 43; H. R. 3020, Sec. 12.

This proposal on the part of the House was rejected, except in two instances, breach of contract and secondary boycotts. Senator Ball, one of the authors of the bill, and Senator Ives, one of its opponents, made it abundantly clear during debate that Congress, in so doing, was retaining the "administrative-law approach to these problems." 93 Cong. Rec. 4559, See also 93 Cong. Rec. 4132.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

—♦—
No. 21
—♦—

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AIRCRAFT AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW-CIO),
An Unincorporated Labor Organization, and
MICHAEL VOLK, an Individual,
Petitioners,

vs.
PAUL S. RUSSELL,
Respondent

—♦—
ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF ALABAMA

PETITION FOR REHEARING

(For List of Attorneys see inside front cover)

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 21

**INTERNATIONAL UNION, UNITED AUTOMOBILE,
AIRCRAFT AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW-CIO),**

An Unincorporated Labor Organization, and

**MICHAEL VOLK, an Individual,
Petitioners,**

vs.

**PAUL S. RUSSELL,
Respondent**

**ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF ALABAMA**

PETITION FOR REHEARING

The petitioners respectfully move for a rehearing of the opinion and judgment of this Court, rendered May 26, 1958. In so doing, we are not unmindful of the Court's general policy of denying such petitions and are taking this step only after the most considered deliberation. Nor would we take this step, were we not persuaded that the decision

sought to be reheard is of the most far reaching consequence, and raises the gravest questions concerning federal-state relations with respect to the national policy embodied in the Labor Management Relations Act, 1947.

We are persuaded, upon study of this Court's opinion in the case at bar, as well as in the companion case, *International Association, etc. v. Gonzales*, (No. 31), that a majority of this Court has either denied effect to the Supremacy Clause of Article VI of the Constitution, insofar as federal regulation of labor relations is concerned, or has concluded that its reading of the Congressional intent from *Hill v. Florida*, 325 U. S. 538, to *Guss v. Utah Labor Board*, 353 U. S. 1, was incorrect. In either event the corpus of law with respect to federalism in labor relations, carefully constructed "by the process of litigating elucidation" over a span of more than a decade and resting upon a construction of the Supremacy Clause evolved in the course of more than a century, has now been mutilated beyond recognition, to the serious detriment of a comprehensively and studiously designed national labor policy and the confusion of the bar practicing in this field.

It had been well settled, we understood, that when Congress, in the exercise of one of its constitutional powers, enters upon a field of regulation, that mode of regulation and the specification of federal remedies is to the exclusion of all others (*Huston v. Moore*, 5 Wheat. 1, 21-23; *Charleston and Carolina R. R. v. Barnville Co.*, 237 U. S. 597, 604; *Missouri Pacific R. R. Co. v. Porter*, 273 U. S. 341, 345; *Cloverleaf Butter Co., v. Patterson*, 315 U. S. 148, 156; *Switchman's Union v. National Mediation Board*, 320 U. S. 297, 301); that an administrative remedy established by Congress must be exhausted prior to resort to the courts (*Aircraft and Diesel Equipment Corp. v. Hirsch*, 331 U. S. 752, 767, 768); and that traditional common law

rights of action for damages, elements of damage, and other rights of action are excluded by provision of other remedies by Congress (*Southern Express Co. v. Byers*, 240 U. S. 612; *Western Union Telegraph Co. v. Speight*, 254 U. S. 17; *Texas and Pacific R. R. Co. v. Abilene Cotton Oil Co.*, 204 U. S. 426; *Slocum v. Del. L. & W. R. R. Co.*, 339 U. S. 239; *Railway Conductors of America v. Southern Ry. Co.*, 339 U. S. 255; *Buster v. Chicago, Milwaukee, St. Paul and Pacific R. R. Co.*, 195 Fed. 2d 72).

The foregoing principles, generally stated, are that where Congress has taken a field in hand and indicated the substantive and adjective law for its regulation, the states may not regulate the same field in duplication or complementation of, or in opposition to, the federal law.

It had also been well settled, we understood, that the substantive and procedural provisions of the National Labor Relations Act were "pre-emptive" in character in accordance with these long established principles. "The Court has ruled that a State may not prohibit the exercise of rights which the federal act protects." "A state may not enjoin under its own labor statute conduct which has been made an 'unfair labor practice' under the federal statutes." "The federal Board's machinery for dealing with certification problems also carries implications of exclusiveness." (*Weber v. Anheuser-Busch*, 348 U. S. 468, 474, 475, 476; *Garner v. Teamsters Union*, 346 U. S. 485.) The only exceptions to the exclusive character of federal substantive and procedural law which prior to the decision in this case appear to have been recognized were the continuing authority of the states to exercise historic powers¹ to deal

¹ In this connection, we have been unable to find authority for the principle that court made tort law represents exercise of the state's police power. And even if the view were accepted that punitive damages are regulatory, they were assessed in this case to prohibit conduct substantially similar to that which it was held in *Youngdahl v. Rainfair, Inc.*, 355 U. S. 131, the state court could not prohibit by injunction.

with local problems such as the regulation of traffic and preservation of the peace (*Allen-Bradley v. W. E. R. B.*, 315 U. S. 740; *U. A. W. v. W. E. R. B.*, 351 U. S. 266), the authority of the states to regulate conduct not subject to federal regulation at all (*International Union v. W. E. R. B.*, 336 U. S. 245), and the power of the states to award compensatory relief on the basis of state law to employers in cases where their rights were not protected by federal law, either substantive or remedial (*United Construction Workers v. Laburnum Construction Corp.*, 347 U. S. 656). Apart from these exceptions, we had thought it to be plain that conduct, subject to federal regulation, either by protection or prohibition, with federal procedures designated to remedy interferences with such federal rights, was not subject to exercise of state power either "in coincidence with, as complementary to, or as in opposition to, federal enactments which disclose the intention of Congress to enter a field of regulation that is within its jurisdiction" (*Missouri Pacific R. R. Co. v. Porter*, 273 U. S. 341).

But now we are told by the Court that the states *have* jurisdiction to entertain a tort cause, by an employee, even though it involved alleged conduct prohibited by the federal Act and subject to the federal Labor Board's remedial authority (which is assumed by this Court to include authority to award lost pay). The "possibility that both the Board and state courts have jurisdiction" is said to make no difference, and the fact that one forum might award back pay and the other not, is said to create "no conflict". The federal remedy is characterized as a "partial alternative"—a strange description of a federal procedure in earlier cases held to have been supreme and ex-

elusive.² We are told that the existence of a state cause of action in small part not subject to federal regulation (as was true in the *Gonzales* case, though not in *Russell*) empowers the state to engage in a wholesale invasion of the federal labor policy, and adjudicate as to federal unfair labor practices (however characterized) in exercise of "comprehensive" powers of equity.

This, of course, undermines the entire concept underlying a comprehensive federal scheme of labor relations, with a national agency empowered to make judgment as to inter-relating rights and duties of employees, employers, and unions. The thrust of this concept, as it had been previously understood, is that the National Labor Relations Board is the tribunal charged by Congress with the power and responsibility of passing judgment in the *first instance*, upon these complex and delicate inter-relationships. Whatever its merits, the Congress decided that *this*, as a matter of national policy, was the effective method of regulating these inter-relationships. Any holding which takes the power of judgment in the *first instance* from the National Labor Relations Board, to that extent deviates from the overall regulatory scheme. We had understood it to have

² If the reason for the Court's holding was that the federal remedy is inadequate this, we suggest, is a matter for the Congress, not the Court. It is no answer to the argument that the piling of remedy upon remedy is objectionable to say, as did the Court, that a complainant "could not collect a duplicate compensation for lost pay from the state courts and the Board". The only assurance of this can come from according exclusiveness to the federal remedy provided, unless this Court substantially alters its *certiorari* policy and agrees to hear every case where a plausible claim is made that the state has exceeded its authority by prohibiting conduct which might be protected or by awarding duplicate compensation for conduct already federally compensated. The claimed inadequacy of the federal remedy has never before been a controlling factor, as witness *Guss v. Utah Labor Board* and companion cases where, because of NLRB jurisdictional policies there was, in practical terms, no federal remedy at all.

been the conclusion of this Court that only in cases of claimed breaches of the peace were the states authorized, because of their immediate interest in matters of such "genuine local concern" (351 U. S. 274) to exercise a judgment in the first instance, even though the conduct involved was also subject to federal regulation. As was said in *Garner and Weber*: "Congress did not merely lay down a substantive rule of law to be enforced by any tribunal competent to apply law generally to the parties. It went on to confide primary interpretation and application of its rules to a specific and specially constituted tribunal and prescribed a particular procedure for investigation, complaint and notice, and hearing and decision, including judicial relief pending a final administrative order. Congress evidently considered that centralized administration of specially designed procedures was necessary to obtain uniform application of its substantive rules and to avoid these diversities and conflicts likely to result from a variety of local procedures and attitudes toward labor controversies."

"* * * [W]here the moving party itself alleges unfair labor practices, where the facts reasonably bring the controversy within the sections prohibiting these practices, and where the conduct if not prohibited by the federal Act, may be reasonably deemed to come within the protection afforded by that Act, the state court must decline jurisdiction in deference to the tribunal which Congress has selected for determining such issues in the first instance."

Now, however, the Court has made a complete turnabout from this general approach. For, although there is no question that the Congress has protected the right to engage in concerted activities, and has invested the National Labor Relations Board with authority to decide when this right has been exceeded to the extent of interfering with and restraining employees in their corollary right to re-

frain from these activities, the decision of the Court permits parallel regulation and policy determination concerning these rights to be made by the state courts. The existence and exercise, hence, of federally protected rights is entrusted to the vicissitudes of state courts and juries.

One consequence of this is to make this Court the sole arbiter of the question of whether or not *under the facts* federal rights have been denied. In other words, the Supreme Court of the United States becomes the only federal agency which will have an opportunity to review the questions of federal right presented under factual issues, and, therefore, must assume the responsibility delegated by Congress to the National Labor Relations Board to insure uniformity in the exercise of labor activity and the protection of employee rights in interstate commerce. Under the authority of *Creswill v. Grand Lodge*, 225 U. S. 246, 261; *Fisk v. Kansas*, 274 U. S. 380, 385, 386, and *Sterling v. Constantin*, 287 U. S. 378, 398, this Court will review facts concerning an alleged denial of federal rights where it is contended that a finding has been made which was without evidence to sustain it, or where the consideration of evidence is necessary to a determination of a federal question. Thus, in every case of this character the question of the sufficiency of the evidence to sustain a limitation of a federal right, and the question of whether or not federal rights were denied under the evidence, will be presented to this Court, which will therefore, be compelled to review such cases on the facts. This is a function which should be exercised, and was intended to be exercised by the Labor Board, and which should not devolve upon this Court.

The difficulties of such factual review are well illustrated by this case where the Court undertook to review the evidence and found "the jury could have found that

work would have been available within the plant if Russell, and others desiring entry, had not been excluded by the force, or threats of force of the strikers." As in the case of the Supreme Court of Alabama, this Court failed to cite any fact which would indicate, or tend to indicate, that work would have been available, or that the employer wished Russell to enter and work during the strike, if he had been permitted to do so. To the contrary, the Court's finding of fact further recites the inconsistent determination that after the strike began Russell "during the next five weeks * * * kept in touch with the unchanged situation at the plant entrance, and set about securing signatures to a petition of enough employees, who wished to resume the work, *to operate the plant.*" This required over two hundred signatures, and there was no showing that a lesser number of employees would have been sufficient to have operated the plant and to have made work available to him.³

In reaching the determination first quoted, this Court, as did the Alabama Supreme Court, overlooked the long line of authority which accords with the general rule, that in cases of interference with employment, an individual cannot recover damages unless he sustains the burden of showing that work would have been available to him where he is employed by the hour and at will, especially where the means used is obstruction of a public street where he must show damages differing not in degree, but

³ On the facts adduced in the trial of this cause Russell, although not desiring to strike, would have lost wages because of the employer's inability to operate, irrespective of the presence or absence of the picket-line. For the record is plain that the strike at the outset was overwhelmingly supported by the employees. The decision of this Court consequently exposes to the hazards of litigation a lawful economic strike engaged upon by most of the employees involved who may, or may not, at the commencement of their strike, to demonstrate their support of it, assemble *en masse* in front of their work premises.

in kind from those which result to the public generally. *Prosser, Torts*, §106 (2d Ed. 1955); *Walks v. C. D. Smith & Co.*, 167 Ala. 138, 52 So. 320; *Ex Parte Ashworth*, 204 Ala. 391, 86 So. 84; *Birmingham Railway Light and Power Co. v. Smyer*, 181 Ala. 121, 61 So. 354; *Cassimus v. Levy-stein*, 176 Ala. 365, 58 So. 280; *Duy v. Alabama Western R. R. Co.*, 175 Ala. 162, 57 So. 724; *Weiss v. Taylor*, 144 Ala. 440, 39 So. 519; *Russell v. Holderness*, 216 Ala. 95, 112 So. 309; *Horton v. Southern Rwy. Co.*, 173 Ala. 231, 55 So. 531; *First Avenue Coal etc., Co. v. Johnson*, 171 Ala. 470, 54 So. 598. (See footnote, page 28, our brief.)

The consequences of this approach generally to the policy goal of nationally uniform regulation of labor relations should be plain on its face, as should the risks which it attaches to any assayed exercise of federally protected rights. Each such exercise, it may be anticipated, will be subjected to harassing litigation with local results dependent upon local sentiment and local law, and with the National Labor Relations Board, theoretically the tribunal charged with administering a federal labor policy, mostly by-passed in its role as a "partial alternative". Certainly, the power of the states to regulate by punitive damages spells the end of uniformity in the exercise of federal rights of employees to engage in concerted activity, and seriously jeopardizes organizational efforts in those sections of the country where economic circumstances most urgently require bargaining strength for the benefit of the economy as a whole. Such compartmentalized regulation in an economy increasingly characterized by corporations and labor organizations whose scope and activities are plainly national in scope is shockingly unrealistic and incongruous.

The scope of the Court's holding in this case, as is attested to by the wide publicity it has received, is inestimable. The Chief Justice in his dissent asks: "Must we assume that the employer who resorts to a lockout is also subject to a succession of punitive recoveries at the hands of his employees?" To this we would add: Suppose an employee alleges a peaceful but tortious interference with his right to work which also constitutes 8 (a) (3) and 8 (b)(2) violations of the federal act and seeks injunctive and compensatory relief. Does the existence of an historic or newly developed state policy (legislative or judicial) with respect to such a claim give the states jurisdiction to duplicate or add to the federal remedy? Suppose the employee decides he prefers the state remedy because it is speedier or more comprehensive? Is the federal remedy merely one to be invoked at the employee's option? Is the likely possibility of a difference in results before the two forums no conflict or is it not precisely the sort of conflict which the pre-emption doctrine is designed to avoid? Conceivable it is that an 8 (a)(3) violation on the part of an employer is not a tort whereas an 8 (b)(2) violation on the part of the union is. Or suppose that employees strike in the face of a contractual no-strike pledge but to protest their employer's serious unfair labor practices. The hairline questions which arise over whether such conduct is protected by the federal Act are well illustrated by the case of *Mastro Plastics Corp., v. N. L. R. B.*, 350 U. S. 270. Under the decision in this case, could employees disapproving of such a strike sue for interference with their employment relationship if the strike successfully closes the plant down, even though under the federal law the strike would be protected notwithstanding it to be in breach of the labor contract? It is plain that the state court and jury would be making findings of fact and law with respect to federal rights and

duties, notwithstanding the common law posture of such litigation. That these questions are not theoretical is evidenced by *Teamsters v. Selles*, 214 P. 2d 456, cert. den'd 26 Law Week 3352 (No. 649 this Term). We do not believe it to have been the Congressional intent, in enacting comprehensive federal labor legislation with federal machinery for administration, to have the right to relief continue to depend upon the vagaries of varying state law as they developed historically.

We respectfully urge the Court to grant this petition for a rehearing.

Respectfully submitted,

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CERTIFICATION

I hereby certify that the foregoing petition for rehearing
is presented in good faith and not for delay.

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